

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI COUNTY, ARIZONA

2012 MAR -7 AM 8:57

SANDRA K MARKHAM, CLERK
 BY: Jaqueline Markham

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR20108-0049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

ORAL ARGUMENT/EVIDENTIARY HEARING

RE PENDING MOTIONS, DAY THREE

NOVEMBER 16, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR20108-0049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Case No. 1 CA-CR 11-0895
9 Defendant.)

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Mina G Hunt (928) 554-8522

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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 255 East Gurley
6 Prescott, Arizona 86301-3868

7 For the Defendant:

8 THOMAS K. KELLY, PC
9 BY: THOMAS K. KELLY, ATTORNEY
10 425 East Gurley
11 Prescott, Arizona 86301-0001

12 MUNGER TOLLES & OLSON, LLP
13 BY: LUIS LI, ATTORNEY
14 BY: TRUC DO, ATTORNEY
15 355 South Grand Avenue
16 Thirty-fifth Floor
17 Los Angeles, California 90071-1560

18 MUNGER TOLLES & OLSON, LLP
19 BY: MIRIAM L. SEIFTER, ATTORNEY
20 560 Mission Street
21 San Francisco, California 94105-2907
22
23
24
25

Mina G. Hunt (928) 554-8522

1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Tuesday,
3 November 16, 2010, at Yavapai County Superior
4 Court, Division Pro Tem B, 2840 North Commonwealth
5 Drive, Camp Verde, Arizona, before Mina G. Hunt,
6 Certified Reporter within and for the State of
7 Arizona.
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PROCEEDINGS

THE COURT: We're on the record in State versus James Arthur Ray. Mr. Ray has waived his appearance for this hearing. He is represented by Mr. Li, Ms. Do, Ms. Seifter and Mr. Kelly. Ms. Polk is here for the state.

When we had ended the hearing last week, Mark Rock was testifying. Counsel?

MR. KELLY: Correct, Judge.

THE COURT: If we could get Mr. Rock back on the stand, please.

Sir, please have a seat at the witness stand again.

Good morning, sir. Of course, you're still under oath, Mr. Rock.

THE WITNESS: Good morning, Your Honor.

MR. KELLY: Thank you, Judge. May I approach?

THE COURT: Yes

CROSS-EXAMINATION (Continued)

BY MR. KELLY:

Q. Mr. Rock, I'm handing you what's been marked Exhibit 130. And I'd ask you to take a moment and look at that document.

A. Yes.

Q. You've had a chance to look at Mina G Hunt (928) 554-8522

Exhibit 130?

A. I see it. Yes.

Q. And are those the notes that you provided to the Yavapai County Attorney's Office through Sheila Polk?

A. They are a copy of them. Yes.

Q. And Exhibit 130 -- does it contain some handwriting?

A. Yes, it does.

Q. And is that your handwriting?

A. Yes, it is.

Q. It's my understanding you provided exhibit -- or this is a copy. But the original of Exhibit 130 to the State of Arizona yesterday. Is that correct?

A. Yes.

Q. Any reason why you would not provide a copy to Ms. Polk last Wednesday?

A. I had called and left a message for Detective Ross and told him I had a copy of these notes, and he said he already had a copy.

Q. Maybe my question was not clear. Last Wednesday you and I discussed the existence of your notes during this proceeding. Do you recall that discussion?

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A. In the courtroom?

Q. Yes, sir.

A. Yes.

Q. And after that discussion you were asked to leave the courtroom; correct?

A. Yes.

Q. And Ms. Polk approached you in the hallway and asked for your notes; correct?

A. No. That's not correct. She asked me if I wanted to give her those notes at that time.

Q. And you refused to do that; correct?

A. I said I wanted to look at them.

Q. And my question, Mr. Rock, is why did it take some four or five days to produce those notes instead of simply giving them to the Yavapai County attorney last Wednesday?

A. Because I wanted to look at them. And when I looked at them, I realized that it was really no big deal.

Q. So --

A. Your attitude and actions in the courtroom made me second guess what I was thinking. Because you became totally out of control, got up from your chair, started accusing me and trying to berate me and treating me less than human.

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Q. Would you agree with me that between Wednesday through Monday when you gave Exhibit 130 to the State of Arizona, you were the only person in possession of those documents; correct?

A. Yes.

Q. You were the only one free to review the contents of Exhibit 130 between Wednesday and Monday; correct?

A. That's correct.

Q. And Ms. Polk was not afforded the opportunity to review Exhibit 130 before your disclosure yesterday; correct?

A. I called them and let them know that they were available. But they were closed because the next day was Veterans Day.

Q. Ms. Polk did not review those notes between last Wednesday when you left the courtroom until you gave them to her yesterday. Fair statement?

A. That's when -- as soon as they could come and get them.

Q. So the only one who would know whether or not Exhibit 130 is complete is yourself; correct?

A. What do you mean complete?

Q. You refused to give them to Ms. Polk last

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1 Wednesday; correct, sir?

2 **A. I didn't refuse at all. I just said I**
3 **wanted to review the notes.**

4 **Q.** You would not allow her to make a copy
5 until yesterday is my point; correct?

6 **A. I called immediately after I had gotten**
7 **back to Angel Valley, and I couldn't get through.**
8 **That's why she couldn't get them until Wednesday.**

9 **Q.** You did not give them to her in the
10 courtroom here in the Verde Valley Justice Center
11 last Wednesday?

12 **A. No, I did not.**

13 **Q.** Now, Mr. Rock, I want to take you back to
14 2008 in your testimony. You described to
15 Judge Darrow last Wednesday as you remember them;
16 correct?

17 **A. Correct.**

18 **Q.** And those -- or that recollection is
19 after you reviewed a statement prepared by Sheryl
20 Stern; correct?

21 **A. I had said that I had reviewed Sheryl**
22 **Stern's statement. Yes.**

23 **Q.** And your testimony last Wednesday was
24 after reviewing the notes which have been marked as
25 an Exhibit 130; correct?

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1 **A. I've had those notes since 2008. So yes.**
2 **I've had plenty of time to review them.**

3 **Q.** And also you've had the opportunity to
4 discuss what happened in 2008 with your wife, Vicky
5 Rock; correct?

6 **A. At what point are you trying to figure**
7 **that one out?**

8 **Q.** All my questions, sir, center between
9 2008 at the conclusion of the Spiritual Warrior
10 ceremony through your testimony last Wednesday. Do
11 you understand the time frame?

12 **A. From 2008 to the time that I testified,**
13 **of course, I've had time to talk with my wife about**
14 **the notes.**

15 **Q.** So you spoke with your wife, you've
16 reviewed Sheryl Stern's statement, and you reviewed
17 Exhibit 130?

18 **A. Right.**

19 **Q.** Any other documents that you reviewed?

20 **A. Absolutely. After the 2009 event, I went**
21 **back and I read all of Carlos Castaneda's books,**
22 **which is what James Ray took most of Spiritual**
23 **Warrior from.**

24 **Q.** In addition to those books, any other
25 documents that you reviewed during that time frame?

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1 **A. Just books written by other authors.**

2 **Q.** Did you speak with any individuals
3 personally about what happened in 2008 other than
4 your wife?

5 **A. Did I speak with anybody -- not that I**
6 **can recall.**

7 **Q.** Did you speak with Mr. or Mrs. Hamilton
8 about what happened?

9 **A. In 2008?**

10 **Q.** Yes, sir.

11 **A. Yes, I did.**

12 **Q.** And was that prior to your testimony?

13 **A. Yes, it was.**

14 **Q.** Now, in addition to Miss Rock, Mr. and
15 Mrs. Hamilton, did you speak with anyone personally
16 about what happened in 2008?

17 **A. Right at this moment I can't recall.**

18 **Q.** Do you recall making a statement to
19 Detective Wendy Parkinson back on October 8, 2009,
20 as to what occurred in 2008?

21 **A. I barely remember speaking with her**
22 **because I was still in an altered state.**

23 **Q.** And what do you mean by an "altered
24 state"?

25 **A. Altered states are created by lack of**
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1 **oxygen. I explained that before.**

2 **Q.** And in this altered state, then, is it
3 your testimony that what you said is not accurate?

4 **A. That what?**

5 **Q.** When you're in an altered state, is your
6 recollection and your subsequent testimony, then,
7 not accurate?

8 **A. That's not what I'm saying. No. I'm**
9 **saying -- I would need to refresh my memory as to**
10 **what exactly I said to her.**

11 MR. KELLY: If I may approach?

12 THE COURT: Yes.

13 **Q.** BY MR. KELLY: Mr. Rock, I'm going to
14 hand you what's been admitted as Exhibit 124, which
15 is the written transcript of your statement of
16 October 8, 2009. Have you had a previous
17 opportunity to review that statement? Did you hear
18 my question?

19 **A. No. I'm sorry. I was looking at the**
20 **notes.**

21 **Q.** Have you had a chance to look at that
22 transcript before your testimony?

23 **A. No.**

24 **Q.** And I'd ask you to take a minute and
25 review it please.

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1 MS. POLK: Your Honor, I don't believe the
2 state has a copy of this transcript.
3 MR. KELLY: I provided one last Wednesday.
4 THE WITNESS: Okay.
5 Q. BY MR. KELLY: You've had a chance to
6 look at Exhibit 124; correct?
7 A. Uh-huh.
8 Q. Mr. Rock, were you in an altered state
9 when those statements were made?
10 A. Yeah. I was slightly altered.
11 Q. Does that mean that we cannot rely on the
12 content or the substance?
13 A. No, it doesn't. Because it's as accurate
14 as I can remember.
15 Q. Very good. If you would please, then,
16 turn to page 3, line 22. Detective Parkinson asked
17 you the question: Have you ever done a sweat lodge
18 before? What was your response?
19 A. Yeah.
20 Q. And she said where? What was your
21 response?
22 A. Here last year.
23 Q. And after Detective Parkinson says okay,
24 what was your statement?
25 A. I was a participant.

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1 Q. And then she asked the question: Okay.
2 Was there anything different about the sweat lodge
3 from last year as opposed to this year? What was
4 your response?
5 A. No.
6 Q. She asked the question: It's the same?
7 And what was your response?
8 A. It felt the same.
9 Q. Could you read your response to
10 Judge Darrow, please.
11 A. It's the same, pretty much the same.
12 Heat level felt the same. It was enclosed the same
13 way.
14 Q. Then there is a discussion about the
15 number of rocks. And I'm summarizing, sir, but you
16 explained to Detective Parkinson that last year
17 there were seven rounds and in 2009 eight rounds;
18 correct?
19 A. Correct.
20 Q. Now, you make reference, sir, in that
21 exchange with Detective Parkinson that last year in
22 2008 you were a participant; correct?
23 A. Correct.
24 Q. And in 2009 you came back as a Dream Team
25 member; correct?

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1 A. That's correct.
2 Q. And were you given a blue T-shirt as a
3 Dream Team member?
4 A. Yes.
5 Q. And on the bottom of that Dream Team --
6 it says "Dream Team" in large letters. Underneath
7 in smaller letters it says "James Ray
8 International"; correct?
9 A. I don't recall that.
10 Q. And then next to it a website. Does that
11 refresh your recollection?
12 A. Pardon?
13 Q. Next to the "James Ray International" in
14 small letters is a website.
15 A. I don't recall that. I just remember it
16 was blue and it said "Dream Team" on it.
17 Q. And you volunteered, then, to help the
18 participants during the 2009 event as a Dream Team
19 member; correct?
20 A. Correct.
21 Q. In reviewing your transcripts, and again
22 sir --
23 If I may approach, Judge?
24 THE COURT: Yes.
25 Q. BY MR. KELLY: You were interviewed

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1 September 21, 2010, by Detective Ross Diskin. I'm
2 handing you what's been marked as Exhibit 125.
3 I've had a chance to review both 124 and 125. And
4 this is the second time we've ever met --
5 correct? -- you and I?
6 A. Yes.
7 Q. We haven't --
8 A. Well, I haven't met you because you
9 haven't told me who you are.
10 Q. I'm Tom Kelly.
11 A. Thank you. It's nice to meet you, Tom
12 Kelly.
13 Q. I represent James Ray. And we've never
14 had a chance to discuss your memory as to what
15 happened?
16 A. Not to my knowledge.
17 Q. 2008 or 2009; correct?
18 A. Correct.
19 Q. Now, when I review these transcripts, you
20 indicated to both Detective Parkinson and
21 Detective Diskin that you were encouraged both as a
22 participant as well as a Dream Team member to
23 hydrate, hydrate, hydrate; correct?
24 A. Yes, I was.
25 Q. And that encouragement was articulated to

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1 all the participants and Dream Team members. Fair
2 statement?

3 **A. Yeah. I felt more so in 2008. But yes.**

4 **Q.** I've had a chance now to take a look at
5 the notes prepared by Julie. And I've forgotten
6 the exhibit number. It's the -- I believe it's
7 130. The encouragement to hydrate is contained
8 within those notes as well; correct?

9 **A. Yes, it is.**

10 **Q.** Also in looking at and reviewing
11 Exhibit 130 last night the -- immediately before
12 the 2009 and 2008 sweat lodge event itself there
13 was a public meeting in which James Ray spoke;
14 correct? Maybe that's a poor question. Let me try
15 again.

16 In 2008 before the sweat lodge started,
17 was there a public meeting with all the
18 participants and James Ray was present?

19 **A. With the group?**

20 **Q.** Yes, sir.

21 **A. At Spiritual Warrior?**

22 **Q.** Yes.

23 **A. Yeah. It was the first night.**

24 **Q.** And, again, this is a poor question. I
25 don't want to take you sequentially event by event

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1 throughout the multiday Spiritual Warrior event.
2 But immediately before the participants entered
3 into the sweat lodge, was there not a public
4 meeting where everyone gathered?

5 **A. Yes.**

6 **Q.** And during that public meeting Mr. Ray
7 indicated that it was going to be very hot in the
8 sweat lodge; correct?

9 **A. Yes.**

10 **Q.** And people were encouraged to hydrate;
11 correct?

12 **A. Yes, they had been.**

13 **Q.** And it's my understanding that the
14 meeting that I described took place between the
15 Vision Quest and the sweat lodge events. Correct?

16 **A. Correct.**

17 **Q.** And also in addition to that public
18 meeting was the opportunity to eat food; correct?

19 **A. Yes. They were -- they had breakfast.**

20 **Q.** And it's my understanding in speaking to
21 the other witnesses during this evidentiary hearing
22 that any participant in the sweat lodge both in
23 2008 and 2009 would be free to leave at any time
24 with the exception that they should wait between
25 rounds. Is that a fair statement?

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1 **A. Correct.**

2 **Q.** And, in fact, I believe your wife told us
3 that she left during one of the earlier rounds
4 after the first round I believe. Correct?

5 **A. That's what she ended up telling me she
6 did.**

7 **Q.** And did you make it through all the
8 rounds on both occasions?

9 **A. No, I did not.**

10 **Q.** It was in 2008 you left in the fourth or
11 fifth round I believe. Correct?

12 **A. I was in for a couple rounds. I was out.
13 And then I was in for a round. I was out. And
14 then I was in for I believe it was the last two
15 rounds. That was 2008.**

16 **Q.** And you described in these interviews to
17 the various investigating detectives that it was
18 the type of a personal challenge that each
19 individual had to accept the responsibility for his
20 or her actions and attempt to complete this
21 particular --

22 **A. I don't know where -- I don't see where I
23 said that.**

24 **Q.** These are my words. Not yours.

25 **A. Yeah. I think you are using your own
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1 **words.**

2 **Q.** That's how I'm characterizing when I read
3 this, that each individual was responsible for his
4 or her own decision as to how much they wanted to
5 participate in the sweat lodge and the other events
6 that week. Correct?

7 **A. You can characterize it any way you'd
8 like.**

9 **Q.** Let's talk about you. You were capable
10 of making your own decision; correct?

11 **A. I was capable of making my own decision.**

12 **Q.** And you accepted the responsibility for
13 your decisions; correct?

14 **A. Yes. That's who I am.**

15 **Q.** As you just told Judge Darrow, in 2008
16 you in exercising your free will and accepting
17 responsibility for your actions came and left
18 several times throughout the sweat lodge ceremony;
19 correct?

20 **A. I came and left at my own free will.**

21 **Q.** And when you left, then, were you -- was
22 there water available to hydrate?

23 **A. Yes.**

24 **Q.** Now, in 2009 did you do the same thing or
25 was it different?

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- 1 **A. No. I did not leave.**
- 2 **Q.** You stayed each and every round?
- 3 **A. Yes, I did.**
- 4 **Q.** Did you ever come out throughout the
- 5 breaks?
- 6 **A. No.**
- 7 **Q.** You could have if you wanted to; correct?
- 8 **A. Of course. Everyone is able to make**
- 9 **their own choices. And I make my own choices.**
- 10 **Q.** It's also my understanding, Mr. Rock,
- 11 that some people chose not to participate at all.
- 12 Correct? Let me rephrase my question. Let me be
- 13 more specific. Some people, specifically Dream
- 14 Team members, chose not to participate in the sweat
- 15 lodge at all; correct? They remained outside?
- 16 **A. Yeah. They remained outside.**
- 17 **Q.** Maybe that's a form of participation. So
- 18 it's a poor question?
- 19 **A. Right. They were participating on the**
- 20 **outside.**
- 21 **Q.** As a participant or Dream Team member in
- 22 exercising free will, a person can remain outside
- 23 if they chose to; correct?
- 24 **A. As a Dream Team member?**
- 25 **Q.** Yes.

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- 1 **A. Actually, we were given our assignments**
- 2 **by Megan.**
- 3 **Q.** Can you tell us Megan's last name.
- 4 **A. Fredrickson.**
- 5 **Q.** And your assignment in 2009 was?
- 6 **A. To be the keeper of the north.**
- 7 **Q.** You also mentioned that in 2009, both in
- 8 your statement as well as in response to a question
- 9 last week that, in your opinion, the men in 2009
- 10 had a higher testosterone level; correct?
- 11 **A. Correct.**
- 12 **Q.** And what did you mean by that?
- 13 **A. They were more aggressive in their**
- 14 **behavior, more gung ho.**
- 15 **Q.** Did they appear to play full on with
- 16 greater enthusiasm than in 2008?
- 17 **A. Yes.**
- 18 **Q.** We have photographs of the sweat lodge
- 19 itself. But my understanding -- and I'm asking you
- 20 to think back about being in the sweat lodge --
- 21 it's very dark when the flap and the door is closed
- 22 and the ceremony begins; correct?
- 23 **A. Yes.**
- 24 **Q.** And at times in 2009 people were lifting
- 25 the corner of the sweat lodge on the wall. Is that

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- 1 a fair statement?
- 2 **A. Yes.**
- 3 **Q.** And I believe you told us that was to try
- 4 to get more cold air, cool air or oxygen; correct?
- 5 **A. Correct.**
- 6 **Q.** And that would also let light in;
- 7 correct?
- 8 **A. Pardon?**
- 9 **Q.** That would also let light into the
- 10 structure; correct?
- 11 **A. Yeah, it would.**
- 12 **Q.** When you described the distress in 2009,
- 13 you did not call 911; correct?
- 14 **A. No.**
- 15 **Q.** You didn't transport anyone to a medical
- 16 facility; correct?
- 17 **A. Correct.**
- 18 **Q.** And you didn't have any personal
- 19 conversations with Mr. Ray after the 2009 incident;
- 20 correct?
- 21 **A. Correct.**
- 22 **Q.** We talked about Barbara Waters. You know
- 23 who Barbara Waters is; correct?
- 24 **A. Correct.**
- 25 **Q.** And in 2008 Barbara Waters was a

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- 1 participant; correct?
- 2 **A. Correct.**
- 3 **Q.** And in 2009 like you, she volunteered to
- 4 be a Dream Team member?
- 5 **A. Correct.**
- 6 **Q.** In -- I want to take you back to
- 7 Detective Parkinson's interview on October 8, 2009,
- 8 which you had a chance to look at. Where did that
- 9 interview take place. Do you remember?
- 10 **A. In 2008 or 2009 -- 2009. I'm sorry.**
- 11 **Q.** It's October 8 of 2009 if I misstated it.
- 12 Shortly after the 2009 incident, you were
- 13 interviewed by Detective Parkinson?
- 14 **A. It was in the cafeteria or lunch area.**
- 15 **Q.** About what time of the day? Do you
- 16 recall?
- 17 **A. It was evening. It was dark.**
- 18 **Q.** And on page 13, line 11, you were
- 19 discussing the tragedy which occurred in 2009, and
- 20 you told Detective Parkinson the only thing I can
- 21 think of is that there was some type of toxic --
- 22 that you know -- it was a toxin, carbon monoxide or
- 23 something. I don't know; correct?
- 24 **A. That's what I said. Yes.**
- 25 **Q.** So that was one of the first things that

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1 came to your mind. Fair statement?

2 **A. It came to my mind shortly in the**
3 **interview. Yes.**

4 **Q.** Now, in 2010 you were interviewed by
5 Detective Diskin; correct?

6 **A. Yes.**

7 **Q.** And your wife, Vicky Rock, was present
8 during the interview; correct?

9 **A. No.**

10 **Q.** Well --

11 **A. I don't remember her being -- for part of**
12 **it we were interviewed separately.**

13 **Q.** If you take a look at Exhibit No. 25,
14 just as a random example, on page 29, line 21, in
15 addition to Detective Diskin's name it says Vicky
16 Rock. So to me that implies she was present at
17 least part of the time.

18 **A. Yeah. She was there for that.**

19 **Q.** And this interview took place at Angel
20 Valley itself; correct?

21 **A. Correct.**

22 **Q.** You and your wife had moved to Angel
23 Valley in August of 2010, I believe?

24 **A. The end of August.**

25 **Q.** And you and she reside there in return
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1 for providing various services to Angel Valley;
2 correct?

3 **A. Correct.**

4 **Q.** Now, my question is this, Mr. Rock: How
5 did the interview come about?

6 **A. How did the interview come about?**

7 **Q.** Yes. In other words, how was it arranged
8 that Detective Diskin was going to show up on
9 September 21 and interview you?

10 **A. It was arranged by, I believe, Amayra**
11 **Hamilton. She asked me -- we were talking about my**
12 **experiences there at Angel Valley, and she asked me**
13 **if I wanted to talk to the detective.**

14 **Q.** So your understanding is Amayra was the
15 one that arranged this interview between you and
16 Detective Diskin?

17 **A. Correct.**

18 **Q.** Were you aware in September of 2010 that
19 Mrs. Hamilton and Angel Valley had been sued by the
20 victims of the 2009 sweat lodge?

21 **A. Yes.**

22 **Q.** Were you aware that in turn Angel Valley
23 and Amayra Hamilton had turned and sued James Ray
24 and James Ray International?

25 **A. At that time I'm not sure.**

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1 **Q.** Are you aware of that today?

2 **A. I'm aware of that today. Yes.**

3 MR. KELLY: Thank you, sir.

4 Thank you, Judge.

5 THE COURT: Thank you, Counsel.

6 Redirect?

7 MS. POLK: Thank you, Judge.

8 REDIRECT EXAMINATION

9 BY MS. POLK:

10 **Q.** Good morning, Mr. Rock.

11 **A. Good morning.**

12 **Q.** Just to clear up the issue of the
13 preservation of your notes --

14 **A. Yes.**

15 **Q.** -- we explained to the Judge at the
16 conclusion of the day on Wednesday, you and I had a
17 meeting out in the hallway. And at that time did I
18 ask you to preserve those notes?

19 **A. You -- well, the Judge asked me to**
20 **preserve the notes. So I felt that. Yeah. I had**
21 **to keep these notes and keep them as they were.**

22 **Q.** And have you altered those notes in any
23 way during that period of time and today?

24 **A. No, I have not.**

25 **Q.** Did you attempt to contact the county
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1 attorney's office or the sheriff's office the very
2 next day?

3 **A. I did. I called. And then -- I called**
4 **and rang and rang and rang and then turned into a**
5 **busy signal. I realized it was Veterans Day and it**
6 **was probably closed.**

7 **Q.** Did you make contact with
8 Detective Diskin the following day, which would be
9 Friday?

10 **A. Yes. I left a message for him to come**
11 **and get the notes.**

12 **Q.** Did you and he subsequently have a date
13 and time when he was going to meet you to get the
14 notes?

15 **A. Yeah. He was -- it turned out that he**
16 **was going to come on Sunday at 3:00 o'clock, but**
17 **previous to that there was a time and date, but he**
18 **was -- he couldn't make it.**

19 **Q.** In fact, he had an earlier date and he to
20 cancel due to being called out on another scene?

21 **A. Yes. We had a date to meet, and he**
22 **couldn't make it.**

23 **Q.** Mr. Kelly covered with you some of the
24 similarities between 2008 and 2009. And is it your
25 testimony that on -- or prior to both sweat lodge

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1 events participants were told to hydrate?

2 **A. Yes.**

3 **Q.** And prior to the ceremony in 2008 as well
4 as 2009, did participants get breakfast between the
5 Vision Quest and the sweat lodge ceremony?

6 **A. Yes, they did.**

7 **Q.** And for both sweat lodge ceremonies that
8 you participated in in 2008 and 2009, were
9 participants free to leave between rounds?

10 **A. Yes, they were.**

11 **Q.** And for both sweat lodge ceremonies, 2008
12 and 2009, was water available to participants
13 between the rounds?

14 **A. Well, I know in 2008 it was. And I can**
15 **only assume in 2009 it was because I wasn't out**
16 **there.**

17 **Q.** You made reference to someone named Megan
18 Fredrickson. Can you tell the Judge who she was or
19 is.

20 **A. Megan Fredrickson is the -- James Ray's**
21 **right-hand person. She was in charge of a lot of**
22 **different aspects of the event.**

23 **Q.** And then you also told the Court that, in
24 your opinion, in 2009 the men had or displayed more
25 testosterone than the previous year?

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1 **A. Correct.**

2 **Q.** Would that apply to James Ray also?

3 **A. Yes, it would.**

4 **Q.** For 2009?

5 **A. For 2009.**

6 **Q.** And what do you mean by that?

7 **A. I mean they were more aggressive. They**
8 **were more aggressive in their behavior.**

9 **Q.** And does that comply to James Ray also?

10 **A. Yes, it did.**

11 **Q.** In what way was he more aggressive in
12 2009 than 2008?

13 **A. Well, at this moment, in 2009 I can't**
14 **remember the lady's name, but she was kind of heavy**
15 **set. And she stood up before the sweat lodge and**
16 **asked if she needed to take her blood pressure**
17 **medication.**

18 **And instead of just telling her, well --**
19 **you know -- whatever you think, he started being**
20 **more aggressive with her and saying well, do you**
21 **really need to take it? And he kept pressing her.**
22 **And then he finally said, well -- you know -- if**
23 **you have to, call your doctor.**

24 **So it was much more aggressive back and**
25 **forth about whether or not somebody should take**

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1 **medication before or during a sweat lodge.**

2 **Q.** And then you were asked a question about
3 Barbara Waters, who in 2008 is, according to your
4 testimony, one of the people who was in distress in
5 2008; is that correct?

6 **A. Correct.**

7 **Q.** In 2009 she was a Dream Team member?

8 **A. Correct.**

9 **Q.** Do you recall where she was in 2009
10 during the sweat lodge ceremony?

11 **A. She was outside.**

12 **Q.** Did she begin outside? Was that her
13 place outside?

14 **A. Her place was outside. Yes.**

15 **Q.** So, in fact, she didn't participate
16 inside the sweat lodge in 2009?

17 **A. No, she did not.**

18 **Q.** Are you familiar with the World Wealth
19 Society?

20 **A. Yes, I am.**

21 **Q.** Was Barbara Waters a member of the World
22 Wealth Society?

23 **A. Yes, she was.**

24 **Q.** Will you tell the Court what the World
25 Wealth Society is.

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1 MR. KELLY: Objection. Relevance, beyond the
2 scope.

3 THE COURT: I believe it is, Ms. Polk.

4 MS. POLK: Judge, it was Mr. Kelly who
5 suggested that in 2009 Barbara Waters came back,
6 that she came back after having a bad experience in
7 2008. In fact, we've learned now that she never
8 went instead the sweat lodge in 2009. But also I
9 think it's relevant that she's part of this society
10 and what the perks or benefits for membership of
11 this society is constituted of.

12 THE COURT: I'll hear some questions on that.

13 Mr. Kelly, if you want to cross on this,
14 you may.

15 MR. KELLY: Thank you.

16 **Q.** BY MS. POLK: Will you tell the Judge
17 what the World Wealth Society is.

18 **A. The World Wealth Society was a membership**
19 **into James Ray's society that people could get**
20 **closer to James Ray and participate. It was very**
21 **expensive. It was an exclusive society of people**
22 **because it was 50 -- I've heard numbers of 50 to**
23 **\$70,000 to be a part of that society.**

24 **Q.** Okay. Thank you.

25 Thank you, Judge.

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1 THE COURT: Thank you Ms. Polk.
 2 Mr. Kelly, did you want to follow up on
 3 that point?
 4 MR. KELLY: I do have one question.
 5 RECROSS-EXAMINATION
 6 BY MR. KELLY:
 7 Q. Were you a member of the World Wealth
 8 Society?
 9 A. No, I was not.
 10 Q. Thank you.
 11 Nothing further?
 12 THE COURT: Thank you, sir, you may step down.
 13 THE WITNESS: Thank you.
 14 MS. POLK: I didn't hear. Did you excuse
 15 Mr. Rock?
 16 THE COURT: I did. I asked him to step down.
 17 MS. POLK: May he be excused?
 18 THE COURT: Counsel, Mr. Kelly, Mr. Rock may
 19 be excused?
 20 MR. KELLY: Absolutely.
 21 THE COURT: Yes, he may. Thank you.
 22 MS. POLK: Judge, at this time I have no
 23 further live witnesses. I would like to make an
 24 offer of proof to the Court with respect to
 25 additional evidence.

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1 THE COURT: Okay.
 2 MS. POLK: Your Honor, the state has marked
 3 numerous exhibits that are referenced in this offer
 4 of proof. I do have for the Court a notebook that
 5 has copies of the transcripts that I'll be
 6 referring to when I make this offer of proof. And
 7 when I finish the offer of proof, I'll move to
 8 admit all of those transcripts as well as some
 9 additional exhibits.
 10 And I would ask the Court to take
 11 judicial notice of the grand jury transcript.
 12 Your Honor, I previously had that grand jury
 13 transcript marked as an exhibit. I would like to
 14 withdraw it as an exhibit and just ask that the
 15 Court take judicial notice of it. And that's
 16 Exhibit 8.
 17 THE COURT: If the defense has any issue with
 18 that. Everybody has a copy of that. So it does
 19 need to be a specific exhibit. It's withdrawn.
 20 MS. POLK: Thank you, Your Honor. With
 21 respect to the state's offer of proof with regard
 22 to statements made by other witnesses that have
 23 been interviewed in this case, the state would
 24 first offer that Detective Ross Diskin is a
 25 detective with the Yavapai County Sheriff's Office.

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1 He's been a detective since 2006 and a certified
 2 police officer for eight years. And, Your Honor,
 3 also I am going to -- I have this in writing. I've
 4 provided a copy to the defense. And I am going to
 5 have it marked as an exhibit and provide a copy to
 6 you as well.
 7 THE COURT: And that is? What are you
 8 referring to?
 9 MS. POLK: This is what I'm reading to you.
 10 It's the state's offer of proof. And it's been
 11 marked as Exhibit 129.
 12 MS. DO: Your Honor.
 13 THE COURT: Ms. Do.
 14 MS. DO: Thank you. Good morning. I'm sorry
 15 to interrupt Ms. Polk. But if we may be heard very
 16 briefly before Ms. Polk goes into what appears to
 17 be perhaps nine pages of an offer of proof? Very
 18 briefly?
 19 THE COURT: All right. I know there was some
 20 discussion about the nature of the evidence. And
 21 you wanted to make some comments on that or the
 22 defense did.
 23 So go ahead, Ms. Do.
 24 MS. DO: Thank you. We are a little bit
 25 confused this morning. Ms. Polk did hand us this

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1 nine-page typewritten what appears to be an offer
 2 of proof recounting from 2003 to 2009. And I'd
 3 like to separate that and discuss with the Court
 4 the offer of proof as to 2009 and then to the offer
 5 of proof prior to 2009.
 6 The Court is aware that when we began
 7 this evidentiary hearing, the defense team had
 8 offered to stipulate whatever the offer of proof
 9 the state wanted to enter regarding the 2009
 10 events. We had concerns about pretrial publicity
 11 on that, and we also felt that whatever offer of
 12 proof Ms. Polk wanted to provide, we would be able
 13 to agree to that for the purposes of this hearing,
 14 to promote efficiency for one.
 15 That, I think, has been mooted. We've
 16 gone now through days of evidentiary hearing where
 17 over numerous objections by the defense team
 18 Ms. Polk has introduced evidence of the 2009 events
 19 through approximately four witnesses. So at this
 20 point I'm not sure why we would be accepting an
 21 offer of proof from the state on the 2009 events.
 22 The defense team at this point having had
 23 our objections overruled would not be stipulating
 24 to an offer of proof since the Court has already
 25 received that evidence through live witnesses on

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1 the stand.

2 With respect to the state's offer of
3 proof regarding the 2003 to 2009 events, we think
4 an offer of proof is inappropriate. The subject of
5 this hearing was for the state to put on evidence,
6 to produce evidence, to carry it's burden under
7 Terrazas; to prove to the Court under clear and
8 convincing standard that these events, in fact,
9 occurred.

10 I think it's inappropriate for the state
11 at this point to offer to prove those events.
12 That's not the subject of the Terrazas hearing. In
13 addition to that, the recounting of what appears to
14 be 26 statements of witnesses at this moment would
15 appear to be argument. We've just been handed this
16 this morning. We've not had an opportunity to
17 review these nine pages going through these 26
18 witness statements. We don't have a response
19 prepared given the lack of notice.

20 We also think that this is really a
21 proper matter for argument, which the Court will
22 hear after the Terrazas hearing is concluded.

23 With respect to Ms. Polk's introduction
24 of the statement to the witnesses, the defense
25 would like the Court to note that we do object to

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1 the introduction as hearsay.

2 I've had a chance to review some of these
3 witness statements in preparation of
4 cross-examining Detective Diskin, who they have now
5 withdrawn. And I can tell the Court, based upon my
6 review, which we'll later argue or brief for the
7 Court, contains not only hearsay but double, triple
8 hearsay. There are statements within those
9 interviews by the witnesses that indicate the
10 witness's lack personal knowledge; are recounting
11 or reciting what they've heard from other
12 witnesses; reciting or recounting what they've read
13 in notes, which the Court has heard some reference
14 to; read in transcripts of other witnesses
15 interviews.

16 So we would like an opportunity, some
17 time, to review these witness statements in order
18 to properly respond to these evidentiary issues
19 that are contained in there.

20 But I think Ms. Polk -- I apologize for
21 interrupting this morning -- was about to,
22 essentially, read to the Court these nine pages
23 that they've now marked as an exhibit, 129, I
24 believe.

25 And I'd also argue to the Court that this
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1 cannot be received as an exhibit by the Court
2 because statements of a lawyer are simply not
3 evidence. I have a case that we cited in our reply
4 to the state's response for our motion to exclude
5 the 404(b) acts. And that's Barcamerica
6 International USA Trust, 289 F.3d 589. That's
7 cited in our brief.

8 So at this point if the Court could give
9 us some direction. I'm not exactly sure why we're
10 proceeding with an offer of proof as to 2009 events
11 when the Court's already heard evidence to that or
12 why we're proceeding with an offer of proof as to
13 the prior acts when those must be proven to the
14 Court by clear and convincing evidence.

15 THE COURT: Ms. Polk, why are you offering the
16 evidence in this form?

17 MS. POLK: Your Honor, the state's offering it
18 in this form because our burden in this proceeding
19 is by clear and convincing evidence. We have
20 presented the Court with live witness testimony
21 with respect to 2003 through 2009. And now the
22 unsworn statements of witnesses, which have been
23 marked -- and I will move for their admission --
24 are being presented to the Court to bolster that
25 live testimony.

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1 But it is appropriate for me to proceed
2 by way of offer of proof to let the Court know what
3 additional evidence I believe the state has to show
4 by clear and convincing evidence that these other
5 acts occurred and that the defendant committed
6 these other acts.

7 THE COURT: The defense was not given the
8 statements until this morning. Is that the
9 situation?

10 MS. POLK: Yes, Your Honor. I had intended to
11 do a verbal offer of proof on Wednesday. I had
12 notified -- well, originally we were going to have
13 Detective Diskin testify. And he was going to
14 relay to the Court statements, hearsay statements,
15 made by witnesses in these recorded interviews,
16 which is appropriate under case law. We can
17 proceed that way.

18 And then based on comments that this
19 court made as well as the defense made indicating
20 that the unsworn statements themselves are more
21 reliable than having a witness from the stand tell
22 The Court what is in those statements, I made the
23 decision to proceed with an offer of proof.

24 This court had indicated that an offer of
25 proof was acceptable in a 404(b) hearing. And upon
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1 reflection after the Court's comments and after the
2 hearing on Tuesday, I reached that same conclusion,
3 that an offer of proof referencing the exact
4 statements made by witnesses that are in these
5 transcripts is a more appropriate way to proceed
6 than having the detective simply hearsay in those
7 same statements.

8 And so on Wednesday I came in, notified
9 the defense that rather than have Detective Diskin
10 testify, I would make an oral offer of proof as to
11 what are in these witness transcripts.

12 We did not get that opportunity on
13 Wednesday. The hearing took all day long. And so
14 in the interim what I prepared is the written offer
15 of proof that references the statements by exhibit
16 number and by page number. And then I provided a
17 copy to the defense this morning. We just
18 completed that work yesterday, and I provided it to
19 the defense.

20 And, Your Honor, what this offer of proof
21 is are exact references to the transcripts where
22 witnesses have made these statements and to the
23 page number. These can -- to me this is more
24 reliable than having the detective hearsay it in
25 because the defense can check the references that

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1 the state cites for reliability.

2 We are simply pointing the defense and
3 the Court to the exact pages of these transcripts
4 where witnesses have made these statements. And it
5 all comes in. It's all relevant to meet the
6 state's burden of proof under 404(b) that we can
7 prove by clear and convincing evidence that the
8 events that we've described and are described in
9 the offer of proof with respect to the prior sweat
10 lodges did, in fact, occur.

11 And, Your Honor, I just want to point out
12 that the transcripts have long been disclosed. The
13 defense has had these statements for months. We
14 have disclosed everything immediately. The only
15 thing that I disclosed this morning that they
16 didn't have is this document where I point to the
17 exact reference, the exhibit, and the page number
18 where the statements are pulled from.

19 THE COURT: Ms. Do, I have thoughts on this
20 but --

21 MS. DO: I'll let the Court proceed. Thank
22 you.

23 THE COURT: I thought that the offer of proof
24 had to do with what happened in 2009. And rather
25 than having specific evidence on that, if there

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1 is -- if the defense was going to concede that,
2 okay, for purposes of this hearing say that
3 happened. And that would then remove the need to
4 show that.

5 And then a couple of times the testimony,
6 when it came up, there was an objection with regard
7 to relevance, then that to me was indicated
8 concession that well, this could be done by offer
9 of proof. We're saying it's irrelevant that for
10 purposes of this hearing we won't object in terms,
11 okay, this could have happened. We'll assume it
12 happened for purposes of 404(b) analysis. And so I
13 looked at an offer of proof as coming in at that
14 point when the defense was objecting to relevance.

15 I think the issue here gets back to the
16 two cases we discussed as we were ending the
17 proceedings last Wednesday -- the LeBrun case and
18 the Aguilar case -- and what evidence is needed in
19 the specific context of a case, what's needed for
20 404(b).

21 Those are 404(c) cases, but the analysis
22 is very similar. And I think that this evidence is
23 something the Court can consider, Ms. Polk. I do.
24 I think it can be offered. I don't -- if
25 everything is written out for me, I certainly would

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1 prefer not to have it read in court, though. I
2 mean, if there is an offer of proof and it comes in
3 that fashion, I just don't see the need to read it
4 here if it's going to be provided and I'm going to
5 accept it.

6 But the defense absolutely needs an
7 opportunity to see completely the form of the
8 evidence and see what they need to provide. I
9 understand you're saying they've seen all the
10 transcripts. But now they have a nine-page
11 document that really presents more in argument form
12 what they're trying to call the Court's attention
13 to. And I would like them to have an opportunity.
14 They absolutely have to have an opportunity to
15 review that and look at it.

16 So I think the evidence is appropriate.

17 But you have to have an opportunity to
18 meet it, Ms. Do.

19 MS. DO: Thank you, Your Honor. We appreciate
20 that.

21 So the Court is aware, the defense does
22 intend after the state rests for this hearing to
23 call one witness. We would actually raise the
24 possibility, if Ms. Polk would agree, of additional
25 time to possibly brief or supplement the briefing

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1 for the Court. I think the Court has received a
2 lot of evidence from the witness stand in addition
3 to receiving now 26 witness statements. There is a
4 lot of facts and testimony to marshall.

5 So we would ask the Court to allow us
6 additional time in addition to reviewing what
7 Ms. Polk has prepared this morning to provide our
8 own rebuttal to that in the form of briefing.

9 THE COURT: Ms. Polk?

10 MS. POLK: I have no objection, Judge.

11 THE COURT: That sounds reasonable to me too.
12 I agree with that. What -- so what I would intend
13 to do, if you have these statements and the defense
14 has seen those, I would accept them. I would like
15 to have the numbers and have them admitted into
16 evidence for purposes of this hearing.

17 And then the offer of proof, I would
18 really like the defense -- they need to have the
19 opportunity to review that completely. I think we,
20 basically, started the hearing quite soon and they
21 probably didn't have that chance.

22 MS. POLK: Your Honor, then I move for the
23 admission -- the state's offer of proof is marked
24 as Exhibit 129. I move for the admission of 129.

25 THE COURT: Okay.

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1 You haven't really had a chance to look
2 at it, you're saying, Ms. Do?

3 MS. DO: I've looked at it very briefly. I
4 haven't had a chance to respond -- or review it for
5 any substance. The defense does object to the
6 introduction of Ms. Polk's nine-page recitation of
7 the offer of proof. It's, basically, her
8 recitation, her version, of what she believes are
9 contained in 26 witness statements, which the Court
10 will not only have the transcripts but the audios.
11 It seems that that Exhibit 129 is, essentially, the
12 state's argument.

13 And if the state would like to provide
14 that in the form of the supplement briefs that
15 we've now agreed we're going to do, then that's
16 appropriate. But to receive it as evidence is
17 inappropriate. The statements of a lawyer is
18 clearly not evidence.

19 THE COURT: Let's skip 129 for now and then
20 get to all of the transcripts you're going to
21 offer, Ms. Polk. I think they're fully listed and
22 marked now, it appears.

23 MS. POLK: Your Honor, the transcripts are
24 exhibits 93 through 120 -- well, through 119.
25 Those are the transcripts. And then Exhibit 120 is

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1 the CD with the audio of those transcripts. And I
2 believe there is a couple of audios that a
3 transcript was not made of.

4 I move for the admission of exhibits 93
5 through 120.

6 THE COURT: Okay.

7 Ms. Do, any other record on the Court's
8 consideration of those?

9 MS. DO: Just to note the defense objection.
10 I understand the Court is applying the relaxed
11 rules under 104(a). But we do object.

12 THE COURT: I'm admitting exhibits 93 through
13 120 inclusive. And it's 93 through 120.

14 (Exhibits 93 through 120 admitted.)

15 THE COURT: With regard to the offer of proof,
16 I indicated I did have one other proceeding. I'd
17 like to take the recess a little bit early. And I
18 want to make sure that all of the defense attorneys
19 have an opportunity to review that statement.

20 And at this point this is an argument to
21 the Court obviously. I don't see the harm in me
22 having that with the understanding that you're
23 going to get a full opportunity to address it,
24 submit briefing. And you will have the time you
25 need to do that.

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1 At this point I would like to take the
2 recess. And I'd like everyone to review Ms. Polk's
3 offer of proof and then --

4 MS. POLK: Your Honor, I have a few more
5 exhibits to move.

6 THE COURT: Okay. Go ahead.

7 MS. POLK: State moves for the admission of
8 exhibits 9, 10 and 11, which are the autopsy
9 reports for Kirby Brown, James Shore and Lizbeth
10 Neuman.

11 THE COURT: Okay.

12 Any objection, Ms. Do.

13 MS. DO: No objections. But I notice this
14 issue came up before, Your Honor. There was an
15 order by the Court that those autopsy reports be
16 sealed. So we should be careful not to violate
17 that order again.

18 THE COURT: The only part that will be
19 released, or parts, are what were previously
20 ordered to be released, just the last page or
21 something, as I recall. The remaining portions
22 will remain sealed at this point.

23 MS. DO: Thank you.

24 (Exhibits 9 through 11 admitted.)

25 MS. POLK: State also moves for the admission
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1 of Exhibit 12, which are the medical records for
2 Daniel Pfankuch, obtained from the Verde Valley
3 Medical Center, dated October 16, 2005.

4 THE COURT: That's another type of record that
5 raises privacy concerns too.

6 But, Ms. Do.

7 MS. DO: Same objection, Your Honor.

8 THE COURT: Okay. I think there really are
9 strong reasons not to have that released. I'm
10 going to admit that, all of these records, 9, 10,
11 11, 12, for purposes of this hearing. 9, 10, 11
12 I've already addressed and what is unsealed.

13 At this point I'm admitting 12 for the
14 purposes of this hearing, but it will be a sealed
15 record.

16 (Exhibit 12 admitted.)

17 MS. POLK: Additionally, Your Honor, I move
18 for the admission of Exhibit 15. It's one of a
19 series of photographs. I note that it was not
20 admitted. And if there is no objection, I would
21 move for admission of 15.

22 MS. DO: No objection, Your Honor.

23 THE COURT: 15 is admitted.

24 (Exhibit 15 admitted.)

25 MS. POLK: May I have one moment, Your Honor?
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1 THE COURT: Yes.

2 MS. POLK: Your Honor, the state also moves
3 for the admission of Exhibit 128, which are the
4 notes prepared by Julia Bunker regarding the 2008
5 Spiritual Warrior Seminar.

6 THE COURT: Ms. Do?

7 MS. DO: Your Honor, I would object to the
8 admission of that evidence or the exhibit. There
9 has been no evidence to establish that Ms. Bunker
10 took these notes other than hearsay statements or
11 under what circumstances were they taken
12 contemporaneous to the events in which she
13 allegedly recorded, or were they prepared a year
14 later. We simply don't know. And looking at it,
15 it's approximately 40 pages of hearsay on top of
16 hearsay.

17 THE COURT: Ms. Polk, that set of notes, much,
18 much, different really than the transcripts of the
19 interviews where there is a witness available who
20 observed demeanor and those kinds of things. There
21 is just no real testimony about the origin of these
22 notes, what motivated them. They were used in
23 cross-examination to some extent. But I have
24 concern about the foundation as to those.

25 MS. POLK: And, Your Honor, the transcript of
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1 the interview of Julia Bunker, which occurred on
2 April 23 of 2010, is Exhibit 93. It has been
3 admitted. In that transcript Julia Bunker explains
4 how she took the notes contemporaneously and that
5 she is a note taker and how she typed them up and
6 produced them.

7 And, of course, now they have been the
8 subject of cross-examination as well. But the
9 foundation for those notes is in the transcript of
10 her interview, which has been admitted.

11 MS. DO: I haven't had a chance, Your Honor,
12 to review Ms. Bunker's statement regarding these
13 notes. I do know Mr. Kelly used it in
14 cross-examination. But that was to test the
15 credibility and accuracy of the witness's account
16 of the 2008, 2009 events.

17 But it's entirely different issue for the
18 state to be introducing that as evidence in and of
19 itself. It's being introduced for the truth of the
20 matter asserted. And the Court has not heard from
21 Ms. Bunker, and nor has the defense had a chance to
22 cross-examine her on the reliability of these
23 notes.

24 THE COURT: And that's also an issue and a
25 concern with statements as well and -- when you
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1 introduce that kind of evidence. Because of the
2 nature of the hearing, I'm going to admit it. I'm
3 very concerned about it. And I think when this
4 kind of evidence comes in, it does put the
5 responsibility on the Court to specify to what
6 degree I would be considering it. Parties really
7 need to know that because, well, it's just unusual
8 kind of evidence. It's different than a statement,
9 reflection over a period of time. They're
10 composed. There are just a lot of considerations
11 there.

12 But at this point I'm going to admit that
13 with the caveat I've mentioned.

14 (Exhibit 128 admitted.)

15 MS. POLK: The last item is Exhibit 121, which
16 is a transcript of the interview of Mark Rock that
17 occurred on September 21st, 2010.

18 MS. DO: No objection, Your Honor.

19 THE COURT: Exhibit 121 is also admitted.
20 (Exhibit 121 admitted.)

21 MS. DO: If Ms. Polk is done -- I'm not sure
22 if she is -- I did have a few matters I want to
23 raise with some of the exhibits already admitted.

24 THE COURT: And I really -- I'm not going to
25 just end everything right now. I would like to
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1 take the recess. So both of you can take a look
2 through your notes and make sure you offer what you
3 wish, Ms. Polk.

4 And Ms. Do, you make any objection or any
5 other record you want to make. But I would like to
6 go ahead and recess now until probably -- might
7 approach a half hour. We'll start as soon as we
8 can.

9 Thank you.

10 (Recess.)

11 THE COURT: The record will show the presence
12 of all of the attorneys. We left off with Ms. Polk
13 making sure she had presented the evidence she
14 wished to present and offered that.

15 I think the only thing that was still
16 somewhat in question was Exhibit 129. I hadn't
17 technically admitted that at this point. I wanted
18 to make sure all of the defense attorneys could
19 look at that and if they had anything in addition
20 to what Ms. Do had related.

21 MS. DO: Your Honor, yes. Thank you. We did
22 have the opportunity to review it. Still not, I
23 think, adequate time. We do object to the Court
24 receiving this. I don't know if the Court has
25 actually taken a look at these nine pages.

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1 THE COURT: I have not.

2 MS. DO: Okay. Well, it appears to be the
3 state's recitation of some of the statements that
4 have been introduced. Our objection to it is, one,
5 statements of a lawyer or statements of
6 interpretation of the evidence is not evidence in
7 and of itself. And it would be inappropriate to
8 receive this as an exhibit.

9 The state has indicated to the Court that
10 it is presenting this to help guide the Court
11 through the 26 witness statements. I know from my
12 previous review that the guide posts -- the guide
13 post the state has offered here is not a fair and
14 objective review of the evidence. It, essentially,
15 are selected facts.

16 And I can give the Court some examples.
17 For example, one of the witnesses that they recited
18 was Marilyn Moss. The Court will receive that
19 statement in the transcript and the audio.
20 Marilyn Moss is supposed to be a witness regarding
21 the Daniel Pfankuch incident in 2005. The state's
22 recitation of Ms. Moss's statement leaves out a
23 very crucial statement from Ms. Moss, which she
24 told the detective that she stood or sat next to
25 Daniel Pfankuch in the lodge.

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1 And her statement was -- she was asked,
2 did you notice him have any problems during the
3 rounds?

4 Ms. Moss said, no. And believe me, I've
5 thought about this because he was right next to me.

6 Detective Johnson: Did he say anything?

7 Marilyn Moss: No.

8 That's omitted from the state's
9 recitation.

10 Another example is a witness, Robbie
11 Brooks-Moore. Also the state will be submitting
12 her statement transcript and audio. She is not
13 contained in this nine-page recitation.

14 Also told the detectives regarding Daniel
15 Pfankuch -- and her statement went like this: I
16 was in the sweat lodge, so I did do that. And --
17 you know -- that evening, as you know, I mean,
18 there was an ambulance called for somebody. So
19 that didn't end so well. But it wasn't -- at the
20 time it wasn't, like, such a traumatic thing. It
21 didn't feel traumatic even though it was. I had no
22 idea what happened with the person -- you know --
23 beyond that point. But -- you know -- it seems
24 like he was taken care of and he was fine. Came
25 back and everything was okay. So -- you know -- so

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1 I did have a very positive experience.

2 And those are just two examples of many
3 more that I was able to come across in preparing to
4 cross-examine Detective Diskin.

5 The Court had asked earlier what the harm
6 might be to the defense. The harm is this is not a
7 fair and objective recitation of the statements the
8 Court will receive in evidence. It is argument.

9 To accept this as an exhibit is, essentially,
10 saying that the state can submit it's brief.

11 And so it does present many problems for
12 the defense. Even though we had about 15 minutes
13 to review it, it's not adequate time to respond to
14 each and every point that is contained herein. I
15 think that Ms. Polk is entitled to make these
16 arguments. We're not asking that the Court prevent
17 her from making these arguments. We're asking that
18 they make it at the appropriate time and in the
19 appropriate form.

20 THE COURT: Okay. What I meant by "harm," it
21 had to do with you will have the ability to make
22 arguments yourself. And that's the sense that I
23 meant that.

24 And I'm not going to consider statements
25 of attorneys as evidence. That doesn't -- that's

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1 outside of any interpretation of 104 that I see.

2 MS. DO: If that is correct, and I agree with
3 the Court that that's the correct state of law,
4 that an attorney's statement is not evidence to be
5 received, there is no reason to allow the state to
6 introduce this as an exhibit.

7 This is not just a verbatim recitation of
8 what the Court will receive by way of exhibits or
9 evidence. This is Ms. Polk's interpretation. They
10 are the state's words. I think it's clearly
11 inappropriate.

12 And what we're concerned about is that
13 this once received does become part of the record.
14 It becomes part of the record that the Court will
15 require under Terrazas. And there is prejudice to
16 the defense.

17 THE COURT: It's only going to be viewed as
18 argument.

19 Ms. Polk, did you intend your compilation
20 to be anything other really than an organization of
21 your presentation of the statements?

22 MS. POLK: No, Your Honor. It's exactly that.
23 The transcripts are voluminous. And it is the
24 state's summary. Every statement we make we cite
25 to an exhibit and to a page number. And it's

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1 compiled to direct the Court to the information
2 that we believe is relevant to the state's burden
3 of proof of clear and convincing evidence.

4 THE COURT: I'm going to view this,
5 essentially, as a factual bench memorandum or trial
6 brief or something like that. I'm not going to
7 consider attorney statements as evidence.

8 And I'm going to give you whatever time
9 you need to respond to this, whatever you want to
10 present in any form, Ms. Do. But I'm going to
11 accept it not -- I'll accept that as --
12 essentially, as a brief. It's not technically an
13 exhibit.

14 MS. DO: Thank you, Your Honor.

15 MS. POLK: Your Honor, may I give you the
16 notebook that the state prepared? It has the
17 offer -- copy of the offer of proof in the front.
18 And all the exhibits have now been admitted.

19 THE COURT: Yes. Just make sure the
20 defense --

21 Ms. Polk is offering this notebook now
22 that contains the exhibits.

23 MS. DO: I believe we have not got a binder
24 such as that. We did receive copies of each
25 statement. We've already made our objection, and

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1 the Court's noted them. Thank you.

2 THE COURT: Thank you. I'll accept that.

3 MS. POLK: Thank you, Judge.

4 THE COURT: Ms. Polk?

5 MS. POLK: The state rests at this time.

6 THE COURT: Mr. LI?

7 MR. LI: Yes, Your Honor. We're going to call
8 a witness. Before we do that, I just wanted to
9 make sure we can take very small housekeeping
10 matter. Looks like the procedure is going to go
11 relatively quickly, which is great.

12 There are two additional motions on
13 calendar related to financial condition and
14 autopsy. We very much appreciate the state
15 stipulating with us to admit Ms. Seifter to make
16 the argument. And we'd like to maybe think about
17 if we would do it after -- perhaps after lunch or
18 something like that. I just want to give my
19 co-counsel some notice as to when the time of that
20 argument would be.

21 THE COURT: I have all day. And so however
22 you want to present the argument or evidence today.
23 Whatever you agree on, that's fine with me. I do
24 have one extradition matter I need to deal with at
25 1:30. But other than that however you want to

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1 present the information.

2 MR. LI: Great, Your Honor. Thank you.

3 Then, we'd call Caren Wendt.

4 THE COURT: Ma'am, if you'd step to the front
5 of the courtroom and raise your right hand to be
6 sworn by the clerk.

7 CAREN W. WENDT,
8 having been first duly sworn upon her oath to tell
9 the truth, the whole truth, and nothing but the
10 truth, testified as follows:

11 THE COURT: Please be seated here at the
12 witness stand. And would you please begin by
13 stating and spelling your full name.

14 THE WITNESS: My name is Caren Wallace Wendt.
15 And it's C-a-r-e-n, W-a-l-l-a-c-e, W-e-n-d-t.

16 THE COURT: Thank you.

17 Mr. LI?

18 MR. LI: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. LI:

21 Q. Ms. Wendt, good morning. Where are you
22 from?

23 A. Austin, Texas.

24 Q. How long have you lived there?

25 A. Born and raised.

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1 Q. Could you tell us a little bit about your
2 education.

3 A. **I'm a graduate of the University of**
4 **Texas. I have three degrees from there.**

5 Q. What are those degrees in?

6 A. **Business administration, psychology and**
7 **education.**

8 Q. Now, what do you do for a living?

9 A. **I have a commercial janitorial company.**

10 MS. POLK: Excuse me, I can't hear the witness
11 very well.

12 THE COURT: I didn't either.

13 THE WITNESS: Commercial janitorial company.

14 Q. BY MR. LI: Approximately how many people
15 do you employ?

16 A. **About 185.**

17 Q. And how long have you run this business?

18 A. **I've run it for about 12 years now.**

19 Q. How did you get involved in that
20 business?

21 A. **I was hired as a salesperson and to start**
22 **helping run the company and built the company up,**
23 **and I ended up buying the company from the owners.**

24 Q. Now, are you involved in any other
25 business ventures?

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1 A. **Yes, sir. I have a business with an**
2 **environmental product called "Green Switch" .**

3 Q. What does Green Switch do?

4 A. **It eliminates all the wasted energy in**
5 **our homes and businesses and hotels -- the energy**
6 **that we're consuming that we don't mean to.**

7 Q. And is this those little switches that
8 can turn off all the lights in the house right at
9 the front door?

10 A. **Yes, sir. Phantom power, unattended**
11 **power, your heating and air conditioning.**

12 Q. And your clients are typically what?

13 A. **Hotels, individuals, businesses.**

14 Q. Now, you first met Ms. Do and I
15 yesterday; correct?

16 A. **Correct.**

17 Q. In Phoenix?

18 A. **Yes.**

19 Q. And we first spoke by telephone, I
20 believe, Friday, November 12 this year?

21 A. **Thursday or Friday.**

22 Q. Thursday or Friday. Had we ever spoken
23 before?

24 A. **No, sir.**

25 Q. Now, had you had an opportunity to speak
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1 with the detectives from the Yavapai County
2 Sheriff's Office?

3 A. **Yes, sir.**

4 Q. And do you recall an individual, a
5 detective, named Detective Mike Polling?

6 A. **I remember he was a gentleman. I don't**
7 **exactly remember his name.**

8 Q. Do you remember approximately when you
9 were interviewed?

10 A. **Long time ago -- you know. Right after**
11 **the 2010 sweat lodge.**

12 Q. Was it about a year ago?

13 A. **Somewhere around a year. Yes.**

14 Q. And you told him everything you knew
15 about your experiences at the 2008 Spiritual
16 Warrior?

17 A. **Yes, sir.**

18 Q. Did he ask a lot of questions?

19 A. **Yes, sir.**

20 Q. Did you try to answer them to the best of
21 your ability?

22 A. **Yes, sir.**

23 Q. Did you conceal anything from him?

24 A. **No, sir.**

25 Q. Now, recently, more recently, were you
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1 contacted by anyone from the Yavapai County
2 Attorney's Office?

3 A. **Yes, sir.**

4 Q. Do you recall the person's name? Man or
5 woman?

6 A. **It was a woman.**

7 Q. Do you have any recollection as to what
8 the person's name might have been?

9 A. **I think it was Ms. Polk, but I just**
10 **remember it was a woman for sure.**

11 Q. Were you told that you might -- you were
12 being contacted as a witness in this case?

13 A. **She talked to me. She asked me some**
14 **questions, wanted to see if I had information that**
15 **could help with the case.**

16 Q. I'm not going to go through the whole
17 conversation, but was the sum and total of it that
18 your experiences were pretty good?

19 A. **Yes.**

20 Q. Did that person from the county
21 attorney's office tell you whether or not you would
22 be a good witness?

23 A. **Yes, sir. She said that I wouldn't be a**
24 **good witness for them.**

25 Q. And did you receive a subpoena from the
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1 county attorney's office?

2 A. No, sir.

3 Q. For this hearing?

4 A. No, sir.

5 Q. For a trial?

6 A. No, sir.

7 Q. Now, do you know an individual named
8 James Ray?

9 A. Yes, sir.

10 Q. And have you attended some of his
11 seminars?

12 A. Yes, sir.

13 Q. Have you attended his various courses?

14 A. All of his courses.

15 Q. And if you could talk to us about what
16 you're getting out of these courses. What is the
17 purpose? Why are you attending these courses?

18 A. I am always looking to be better, learn
19 more, accomplish more.

20 Q. Has he helped you at all in accomplishing
21 any of that?

22 A. Yes, sir.

23 Q. How?

24 A. He's introduced me to a lot of materials,
25 a lot of different ways of thinking, a lot of

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1 books, started me on reading, made me think more.

2 Q. You had a little bit of a sort of look on
3 your face when you said reading. What was that?

4 A. I'm not much of a reader.

5 Q. You're not much of a reader?

6 A. No, sir.

7 Q. He has gotten you to start reading books?

8 A. Yes, sir.

9 Q. What kind of books?

10 A. All different kinds of books. Self-help
11 books, the bible, all different kinds of books.
12 Just many, many different authors and different
13 books.

14 Q. When we had talked, I think, a couple of
15 days ago, you had mentioned something about a
16 self-defeating voice. Could you explain to us what
17 that is and whether Mr. Ray has any -- had any
18 impact on this self-defeating voice?

19 MS. POLK: Your Honor, first of all, I can't
20 hear Mr. Li's question, so could he repeat it.

21 THE COURT: Self-defeating voice?

22 THE WITNESS: Self-defeating voice.

23 THE COURT: Is that what you weren't hearing?

24 MS. POLK: Yes. Thank you.

25 THE WITNESS: What I've realized is I have a

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1 lot of negative self-talk going on in my head. Or
2 when I get into a situation, my thoughts and the
3 talking to myself is always negative. I can't do
4 this. I can't do that or I don't know enough to do
5 that. I didn't realize how much negativity I was
6 telling myself.

7 And -- you know -- it just took somebody
8 pointing out -- you know -- let's write down what
9 you think and read over what you're thinking and
10 then you see and in your own handwriting, whoa.
11 You know. Look at what I'm thinking. So --

12 Q. And you try to overcome what you're
13 thinking?
14 A. Absolutely. When I realized -- and
15 realizing is the biggest part of change. When I
16 realized what I'm doing, then it takes a conscious
17 effort to change the way I talk, change the way I
18 think and put it in a more positive and enhancing
19 method.

20 Q. And were you having these negative
21 thoughts even though you were successfully running
22 a company of 185-some-odds folks?

23 A. Yes, sir.

24 Q. Are you more confident now?

25 A. Yes, sir.

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1 Q. Let me ask you. You had also talked
2 about giving back to the community when we had
3 chatted earlier. Do you recall that?

4 A. Yes, sir.

5 Q. If could you please describe for us what
6 you meant by that. Have you been giving back to
7 the community, and in what ways?

8 MS. POLK: Excuse me for interrupting. The
9 state's been provided with no statement. Mr. Li
10 keeps referring to an earlier conversation. And I
11 would just request that we be provided a copy of
12 this statement.

13 MR. LI: How about this: I'll just ask the
14 question differently, and I will simply -- I'm just
15 trying to put her in a place where she might recall
16 a specific instance.

17 THE COURT: Is there a statement?

18 MR. LI: We don't have a statement. We talked
19 to her on the phone Friday. The state --
20 actually -- strike that, Your Honor.

21 The state has a statement. It's a
22 recorded statement. And it's one that the state is
23 submitting to you.

24 THE COURT: Okay. Well, you said you were
25 going to withdraw that question.

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1 MR. LI: I'll withdraw it as phrased.
2 THE COURT: I'll sustain the objection to that
3 question, and we'll just go with the questions
4 asked.

5 Ms. Polk?

6 MS. POLK: Your Honor, that's fine. And I was
7 just -- the state -- there was an interview by
8 Detective Diskin that Mr. Li has referred to. And
9 that was -- I'm sorry. Detective Polling. And
10 that was disclosed by the state to the defense --
11 by the state to the defense a long time ago.

12 But Mr. Li is referring now to
13 conversations that occurred last Thursday or Friday
14 as well as a meeting on Monday. And that's -- the
15 state has been provided no disclosure regarding
16 either of those two meetings.

17 MR. LI: Your Honor, if we could deal with
18 this outside the presence of the witness. We'll
19 finish off the testimony.

20 THE COURT: Yes. You may ask your next
21 question.

22 MR. LI: Thank you, Your Honor.

23 Q. Are you involved in the community, in
24 your community?

25 A. Yes, sir.

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1 Q. In what ways?

2 A. I participate. I feed the homeless. I
3 become real active in recycling and eliminating
4 some of the waste in my life. I donate to
5 different charities. I clean with my janitorial
6 company some nonprofit organizations at a
7 substantially reduced price just to help them out.

8 Q. How about your church?

9 A. Yes. I clean my church and I give to my
10 church.

11 Q. What church do you belong to?

12 A. Saint Andrews Presbyterian.

13 Q. Is that a sort of new age church or just
14 a Presbyterian church?

15 A. It's not a new-age church, but our
16 minister has very open and progressive ideas, I
17 guess.

18 Q. Has Mr. Ray had any impact on your
19 involvement in the community?

20 A. Yes, sir.

21 Q. In what ways?

22 A. He challenge us to give back more, to
23 make a difference, to be grateful for what we have
24 and look for ways that we can enhance our community
25 by giving back. Put it forth as a challenge.

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1 Q. Is it a macho challenge?

2 A. Oh, no.

3 Q. Now, ma'am, do you quote, unquote,
4 "follow James Ray"?

5 A. No. I do not believe I follow James Ray.

6 Q. Tell us what you mean by that.

7 A. I believe that I study with James Ray. I
8 believe that -- you know -- I look at him kind of
9 like a teacher or a coach. I do not believe that I
10 follow him.

11 Q. Does he tell you to obey his every word?

12 A. No, sir. Actually, he says repeatedly
13 don't take what I say as gospel. I don't know if
14 those are his words. But don't take what I say
15 as -- you know -- gospel. Just go out and do your
16 own research. I'm not telling you anything new.
17 I'm just presenting it in a different way. And he
18 gives a list of all the people that he gets his
19 information from. Those are a lot of books that we
20 read.

21 Q. Does he tell you to challenge what he
22 says?

23 A. Oh, yes. He says to go do your own
24 research. Bring him new books and ideas and -- you
25 know -- think -- look for yourself. And he says to

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1 do that with everybody in your life, not just him.

2 You know -- to stop and think and explore your own
3 options.

4 Q. Does he tell you whether you should
5 listen to everything or accept every single thing
6 he says?

7 A. I'm not really sure I understand that.

8 Q. Yes. Let me rephrase that. Has he ever
9 said to you take what you want. Leave the rest?

10 A. Yes, I guess.

11 Q. Have there ever been physical challenges
12 in any of these seminars that you participated in
13 that Mr. Ray has suggested that you've turned down?

14 A. Yes, sir.

15 Q. Can you give me an example.

16 A. I -- in Tahoe we did an obstacle course,
17 and I didn't cross a tightrope. I didn't climb a
18 mountain. There is several things.

19 Q. You didn't climb a mountain? You didn't
20 do the end of an obstacle course?

21 A. I know there is a couple more. I can't
22 think right now off the top of my head.

23 Q. In those various incidents where you
24 declined a physical challenge, did he yell at you?

25 A. No, sir.

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- 1 Q. Did he attempt to belittle you for not
2 doing those challenges?
3 A. No, sir. I mean, he always wants to know
4 what's behind -- especially the mountain -- what's
5 behind you not doing it. Are you just afraid or
6 what? What's coming up for you?
7 Q. And once you identify what's coming up
8 for you when you decline to do these challenges,
9 does he mock those?
10 A. He's never mocked me.
11 Q. Does he mock other people?
12 A. I don't know if he mocks. He pushes.
13 Q. Does he challenge them?
14 A. Absolutely.
15 Q. Now, if we could focus for a second on
16 the Spiritual Warrior retreat in 2008. It was a
17 five-day retreat?
18 A. Yes, sir.
19 Q. Now, when you went to the Spiritual
20 Warrior event, how were you feeling at the time you
21 went?
22 A. I was sick.
23 Q. Did you have some sort of --
24 A. Upper respiratory. I wasn't feeling
25 well.

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- 1 Q. Sorry. An upper respiratory?
2 A. Yes. I wasn't feeling well.
3 Q. Did you talk to your doctor about it?
4 A. Yes, sir.
5 Q. What did he say?
6 A. He didn't want me to go.
7 Q. Did you go?
8 A. Yes, sir.
9 Q. Now, there are lot of events. I'm not
10 going to ask you to recount all of them. But if
11 could you, essentially, describe in general what
12 the five-day Spiritual Warrior event was about.
13 A. To me the Spiritual Warrior event was
14 about going inside yourself, really going inside
15 and taking a hard look at -- you know -- your past,
16 your present, what you're going through, what
17 you're struggles are, what your inner thoughts are.
18 Q. And confronting them?
19 A. Identifying them. I don't really know if
20 confronting is the right word. But kind of just
21 becoming aware, having some "a-ha" moments, maybe
22 confronting, working through them.
23 Q. There was an event at the beginning where
24 folks shave their hair?
25 A. Yes, sir.

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- 1 Q. Did you participate in that?
2 A. Yes, sir.
3 Q. Could you please describe that to us.
4 A. It was on the first day when we got
5 there. And I thought it was going to be pretty
6 easy for me to do because I had short hair. So I
7 was one of the first ones or second ones to get up
8 and get it over with.
9 And I realized -- what he told us that we
10 were doing is we were preparing for an inward
11 journey. I don't know if those are his words or my
12 words. But -- you know -- we were -- what a better
13 way to prepare for going inwards than to get rid of
14 our out.
15 And I thought it would be something
16 really easy, no big deal. But I realized I did
17 have a lot of dependency on my hair, my makeup,
18 those kinds of things. Because it was a big
19 challenge for me to shave my head.
20 Q. Did you feel like you were preparing for
21 war?
22 A. No. I never felt like I was preparing
23 for war.
24 Q. You've got a son, don't you?
25 A. Yes, sir.

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- 1 Q. What does he do for a living?
2 A. He's in the military.
3 Q. What branch?
4 A. He's in the air force.
5 Q. Now, once you shaved your hair and dealt
6 with the fact that it was more difficult than you
7 thought it would be, what did you think about it?
8 What result?
9 A. Well, the most -- the major result came
10 when I got home after the retreat through all the
11 processes that I had gone through. Because I
12 realized that anything that I wanted to convey had
13 to come from inside of me. If I wanted to feel
14 happy or pretty or any of those things, that had to
15 come from inside me. It couldn't come from my hair
16 or the way I looked because my hair was gone.
17 It was very empowering for me actually.
18 It really was. I've had some friends who had done
19 it before and --
20 Q. For what purpose?
21 A. The Cancer Society in Austin does it.
22 And -- well, they do it mainly to show women that
23 they're more than their hair, they're more than
24 their breasts. Whatever is presented, you're
25 deeper than that. And I had a friend whose sister

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1 **did it. Until you shave your own head, you didn't**
 2 **really get that. I didn't personally.**

3 **Q.** Who were your -- I'm going to now move
 4 over to your lodging and where you were staying.
 5 You stayed in a tipi?

6 **A. Yes, sir.**

7 **Q.** Who were your tipi mates?

8 **A. Rinette and Rose.**

9 **Q.** Is it Rosie Venezuela?

10 **A. Something like that.**

11 **Q.** Rinette Christiansen?

12 **A. Yes, sir.**

13 **Q.** Do you remember if there was a doctor
 14 participating in that event?

15 **A. I don't know.**

16 **Q.** I'm going to focus you for a second on an
 17 event known as the Samurai Game or the -- are you
 18 familiar with the term "the Samurai Game"?

19 **A. Yes, sir.**

20 **Q.** Okay. Could you please describe -- did
 21 you participate in something called "the Samurai
 22 Game"?

23 **A. Yes, sir.**

24 **Q.** Could you please describe it to us.

25 **A. James was presented as God, and we were**
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1 **both on different --**

2 **MS. POLK:** Your Honor, I have a hard time
 3 hearing the witness.

4 **THE COURT:** Ma'am, if you could talk into the
 5 mic.

6 **THE WITNESS:** Yes, sir. James was presented
 7 as God, and we had -- we were on opposing teams.
 8 We each had a captain.

9 **Q.** BY MR. LI: I'm going to stop you right
 10 there. James was presented as God. Did you guys
 11 think he was God?

12 **A. No, sir.**

13 **Q.** Was he presenting himself as a God?

14 **A. No. He was just -- not to me. He was**
 15 **overseeing the game, and that was one of the**
 16 **characters of the game. It really wasn't a game.**
 17 **It was an exercise.**

18 **Q.** Did he tell you where this exercise had
 19 come from?

20 **A. He said it had come from AT&T from one of**
 21 **his leadership conferences.**

22 **Q.** AT&T. Sorry. Leadership conferences.
 23 Was it a religious exercise?

24 **A. No, sir.**

25 **Q.** What was the purpose of the exercise?

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1 **A. Team building, being aware of what we do**
 2 **when we're not aware that we're doing it. I don't**
 3 **know if that makes any sense but --**

4 **Q.** When nobody is looking?

5 **A. Yeah. Don't talk, and then how many**
 6 **times do we really talk when we don't know that**
 7 **we're talking. I don't know if that makes sense.**

8 **Q.** So if there was a rule that you can't
 9 talk, the purpose was to show that you actually end
 10 up talking a lot?

11 **A. Well -- and what happens if you do, do**
 12 **you not come forward and say I talked? Or do you**
 13 **hide it and go on?**

14 **Q.** Integrity?

15 **A. Yes.**

16 **Q.** Now, this whole exercise with the samurai
 17 and the samurai clips, all of that, what did you
 18 think of it? Did you think it was --

19 **A. I thought it was pretty silly and stupid.**
 20 **I mean, I got a lot -- I didn't get a lot out of**
 21 **it, but I understood one of the girls in our group**
 22 **talked, and she was a pretty important player on**
 23 **our group. And -- you know -- part of us were kind**
 24 **of like, well, nobody heard but us. Don't say**
 25 **anything. Because she was our most valuable**

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1 **player. But we all came up with a team as a team**
 2 **and said no -- you know -- we've got to -- we broke**
 3 **the rules. We've got to tell.**

4 **Q.** Did others in your -- on your team share
 5 your opinion that it was silly?

6 **A. Oh, yeah. I think so. We kind of rolled**
 7 **our eyes and that kind of thing.**

8 **Q.** Did anyone in your group confuse James
 9 Ray for God?

10 **A. No, sir.**

11 **Q.** Now, just -- there are teams in this
 12 exercise; right?

13 **A. Yes, sir.**

14 **Q.** And you said there were competitions and
 15 what have you?

16 **A. Yes, sir.**

17 **Q.** What were the nature of those
 18 competitions?

19 **A. In the end I think one of them was**
 20 **carrying an egg across the line, holding your**
 21 **breath. I can't remember. I remember those right**
 22 **off. I don't remember the other ones.**

23 **Q.** So holding an egg?

24 **A. Walking across the line with the egg.**
 25 **The one who drops first. I think we spun around**

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1 with our head on a bat. I think that is one of
2 them.

3 Q. And that was pretty silly?

4 A. Yes. I felt pretty silly.

5 Q. Now, if you lost the

6 head-spinning-around-a-bat game, would you then be
7 eliminated from the game?

8 A. Yes. You died.

9 Q. You quote, unquote, "died"?

10 A. Yes.

11 Q. Did anybody actually think that this was
12 talking about real death?

13 A. No, sir.

14 Q. I'm going to move on to an event known as
15 the Vision Quest. Are you familiar with that?

16 A. Yes, sir.

17 Q. Did you participate in the Vision Quest
18 in 2008?

19 A. Yes, sir.

20 Q. Could you please describe for us what you
21 did and how you perceived it.

22 A. We were taken out -- I was so nervous.
23 I'm a city girl. I was very nervous. But we were
24 taken out at night and dropped off at a
25 predetermined location by ourselves. And we were

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1 given a list of things that we had to take. I
2 can't remember the whole list now. Sleeping bags
3 and warm. We didn't have any food or water. Whole
4 list of things. And then we were left there for a
5 couple of days or however long it was. And we
6 were -- we did a lot of journaling. I remember a
7 lot of journaling.

8 Q. I'm going to stop you there. Journaling.
9 What does that mean?

10 A. Writing down your thoughts, what's in
11 your head, which I don't like to do that either. I
12 just wrote pages and pages and pages and pages of
13 stuff. So things that are coming to your mind,
14 what you're thinking about, just anything that
15 comes into your head.

16 Q. So you're out there. You're journaling.
17 What happens?

18 A. I slept better than I've ever slept. I
19 loved every minute of it, which really surprised
20 me. I was quiet and still. I live a very busy
21 life. And I didn't have a cell phone or a computer
22 or any distractions. And I just was still, and it
23 was a huge change for me. I really, really could
24 have stayed longer. I really liked it. It was so
25 new to me.

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1 Q. Did you come to any realizations about
2 your life while were you sitting out there writing?

3 A. Yes. I did.

4 Q. And without going deep into the detail,
5 if you could just generally describe what you got
6 out of it.

7 A. I have a lot of masculine energy I guess.
8 People are always saying gosh. You're more male
9 than female. And I guess they think that's a
10 compliment or something. But I guess what came up
11 for me is that kept coming up for me. And I was,
12 like, wait a minute. I don't understand.

13 I realized when I was out, I have some
14 things with my mother and my grandmother, always
15 taking care of my mother and my grandfather and
16 that kind of thing. I realized that -- this is
17 kind of silly, but I realized that a lot of my role
18 models and a lot of the things I had about women
19 came from some TV shows that just kept coming into
20 my mind -- Archie Bunker and Bewitched. Sounds so
21 silly.

22 But when I was a little girl, this is
23 what I did is I watched these shows and -- well,
24 that came up for me. If you want to look at the
25 real heroines in my life, it is my mother and my

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1 102-year-old grandmother who took care of
2 everything. It was really powerful for me. It was
3 really, really powerful.

4 Q. Now, before you went out on your Vision
5 Quest, did James Ray or members of his staff talk
6 about the importance of keeping hydrated?

7 A. Yes, sir.

8 Q. Once or twice or all the time?

9 A. All the time. Even before. Even before
10 the event -- you know -- hydration. The first day
11 that we got there we got a water bottle. We got a
12 backpack and a water bottle and some salt. And he
13 instructed us to use salt because hydration is
14 really important and we're going to need it
15 towards -- at the end of the week. And hydration
16 comes from the days beforehand, not the day of.
17 And -- you know -- every time we took a break, he
18 would call it a -- you know -- go get you some
19 water. I was nervous.

20 Q. I'm going to take you to right after the
21 Vision Quest was finished. Did some folks come and
22 get you?

23 A. Uh-huh.

24 Q. And what happened next?

25 A. We went and we ate. I don't remember how

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1 long or anything. But we went and ate. And then
2 we were told to get ready for the next event. And
3 that was the sweat lodge. I think that's right.

4 Q. I think you said you ate. Were you
5 encouraged to drink as well?

6 A. Oh, yes.

7 Q. Now, the sweat lodge. Had you been told
8 about the sweat lodge before?

9 A. No, sir.

10 Q. Were you surprised?

11 A. Yes, sir.

12 Q. Had you ever been in a sweat lodge?

13 A. No, sir.

14 Q. What did Mr. Ray tell you about what you
15 could experience in the sweat lodge? What was the
16 sweat lodge going to be like?

17 A. He told us that -- he told us that it was
18 really dark and that it was really hot and that
19 when we went in, we needed to go from the left to
20 the right and to make sure that if we left that we
21 still went left to right and only leave between the
22 two -- between the rounds. There were hot rocks in
23 the middle. He told us that he had -- I can't
24 remember the gentleman's name -- an Indian bless
25 the sweat lodge, that he didn't make it but he did

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1 bless it -- you know -- to make it more special.

2 Q. Now, when you said that you were supposed
3 to leave in a certain direction and that there were
4 hot rocks, was it to avoid the rocks?

5 A. He told us that for everybody's safety to
6 go around. Crawl. Don't stand up. There was hot
7 rocks in the middle and it was dark, so yeah. So
8 we didn't hurt ourselves or other people to make
9 sure we did that. Plus it's going left to right is
10 part of the ceremony part of it.

11 Q. And then about leaving between the
12 rounds. What was the purpose behind -- did he
13 explain why it was important to leave between
14 rounds?

15 A. The same reasons. Not to disrupt the
16 round or the process for everybody. And it was
17 dark and you couldn't see. The round is over, the
18 flap is up. If you're going to leave, leave then
19 and left to right.

20 Q. As he was describing to you how to leave
21 and those sorts of things, did he say don't leave?

22 A. No, sir.

23 Q. Did he say it was going to be really hot?

24 A. Yes, sir.

25 Q. Did he engage in sort of hyperbole about

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1 how all --

2 MS. POLK: Your Honor, I'm going to object to
3 this leading line of questioning.

4 THE COURT: Sustained.

5 MR. LI: Let me rephrase it.

6 Q. How did he describe how hot it was going
7 to be? What did he say?

8 A. He said you're going to feel like you
9 were dying.

10 Q. Did you think he was actually talking
11 about dying, physically dying?

12 A. No. I don't think so.

13 Q. Did you think that you could leave or not
14 leave?

15 A. I thought I can leave.

16 Q. Did you think you could participate or
17 decline to participate?

18 MS. POLK: Again, I would object to the
19 leading line of questions.

20 THE COURT: Sustained.

21 Q. BY MR. LI: Did you think you could
22 choose whether to participate?

23 MS. POLK: Same objection.

24 THE COURT: Sustained.

25 Q. BY MR. LI: What did you think about

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1 whether you should participate or could participate
2 in it?

3 A. In all the events I felt like it was my
4 choice.

5 Q. Let me focus for a second on the sweat
6 lodge itself. Was it hot?

7 A. Yes.

8 Q. Now, during the course of the sweat
9 lodge, at any point did you leave?

10 A. Yes, I did.

11 Q. Do you recall approximately when?

12 A. I believe it was after the third round.

13 Q. Did anyone else leave?

14 A. Well, lots of people left all different
15 rounds. And one lady actually left during one
16 round.

17 Q. Was Mr. Ray abusive to any of the people
18 who were leaving?

19 A. He wasn't abusive. I mean, he would tell
20 us you are more than this. You can do this. You
21 know -- you're more than this. That kind of thing.
22 In a way it was just like my son's football coach.
23 He played football in high school and college. You
24 can do it. You can do it. That kind of thing.

25 Q. Was there a pregnant lady who was part of

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1 the ceremony?
 2 A. Yes.
 3 Q. Do you remember her name?
 4 A. I think it was Tori. Tari, Tori. She
 5 told --
 6 Q. Go ahead.
 7 A. She told -- before the sweat lodge she
 8 told James -- she said I just found out I'm
 9 pregnant. Should I do this? He said I can't tell
 10 you that. I have no idea. You know. I'm not a
 11 doctor. You know. I can't tell you that. That's
 12 something that you have to decide.
 13 Q. During the sweat lodge ceremony did you
 14 have a chance to sit near her, or was she far away?
 15 A. When I came back in, I sat right next to
 16 her and Christine Jobe.
 17 Q. So I kind of skipped ahead, then. All
 18 right. You went out in round three. What did you
 19 do out there?
 20 A. I sat down and got some water, I think,
 21 cooled off. And then I don't remember who it was.
 22 Somebody said let's hold space for the people
 23 inside. We kind of stood up and held hands outside
 24 the sweat lodge and just was quiet while the people
 25 were inside.

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1 Q. Approximately how many people were with
 2 you as you were standing outside the sweat lodge
 3 holding hands?
 4 A. 10 to 15.
 5 Q. And were those folks able to stand?
 6 A. A lot of us stood. I don't remember that
 7 exactly. We were standing. I don't know if all of
 8 us were or not.
 9 Q. And were you able to stand?
 10 A. Yes.
 11 Q. Was it chaotic outside?
 12 A. No, sir.
 13 Q. Now, you had just said that you went back
 14 into the sweat lodge. Approximately when did you
 15 go back in?
 16 A. After that next round.
 17 Q. So this would be, say, round five?
 18 A. Yeah. I mean yes, sir.
 19 Q. And who did you -- what did you do when
 20 you went back in?
 21 A. Well, also James had told us that it's
 22 really hot. And it's hotter if you sit up -- you
 23 know -- because heat rises. So the first time when
 24 I went in I sat up. And it was, like, this is hot,
 25 and I left. The second time when I went back in, I

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1 laid down with my face on my hands.
 2 Q. And this is when you were next to
 3 Christine Jobe and the woman who was pregnant?
 4 A. Yes, sir.
 5 Q. Okay. How were they doing next to you?
 6 A. I guess we were fine. We were talking to
 7 each other, laughing and joking.
 8 Q. Was Christine unconscious at the time?
 9 A. Christine Jobe?
 10 Q. Yes.
 11 A. No, sir.
 12 Q. Now, let's get to the end of the sweat
 13 lodge ceremony. What happened then?
 14 A. We all crawled out, and we went out and
 15 sat outside. And they hosed us off with water and
 16 gave us water. And we went outside. And Chris and
 17 I are good friends. Christine. She sat in the
 18 mud. We all sat in the mud. And they put water on
 19 us and everything. I don't like that part.
 20 That was it. Cooled off, gave us water,
 21 hose us off. And then that's about it. Oh. We
 22 burned our tobacco pouches.
 23 Q. So when you left the sweat lodge, you
 24 walked where approximately?
 25 A. I came out the sweat lodge, and I went

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1 out and sat kind of right out -- not right out but
 2 straight out the sweat lodge door. And I sat with
 3 Christine. And I sat there for a little bit. And
 4 then I got up and went to a white tent area. I
 5 didn't like being in the mud. I just didn't like
 6 that. So I went and sat at the white tent area and
 7 moved over there, talked to a few of my friends.
 8 Q. And you sat near Miss Jobe in the mud.
 9 How was she doing? Was she unconscious?
 10 A. Christine? No, sir.
 11 Q. Were you talking to her?
 12 A. Yes, sir.
 13 Q. Was she happy?
 14 A. Yes, sir.
 15 Q. Now, as you walked from the sweat lodge
 16 to the place where Miss Jobe was lying in the mud,
 17 about how far was that, if you can --
 18 A. Like, from me to you. Something like
 19 that.
 20 MR. LI: Let the record reflect my best
 21 estimate to Detective Diskin is probably about 15
 22 feet.
 23 Q. And as you walked that 10 feet or so,
 24 were you able to see around you?
 25 A. Yes, sir.

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1 Q. And when you sat down in the mud, were
2 you also able to see around you?

3 A. Yes, sir.

4 Q. And hear?

5 A. Yes, sir.

6 Q. And then you walked to a tent?

7 A. Yes, sir.

8 Q. Approximately how far was that tent from
9 where Miss Jobe was sitting in the mud?

10 A. Maybe over to that bench over there.

11 Q. Where that wall is?

12 A. Yes, sir.

13 MR. LI: So, Your Honor, estimate that to be
14 another 15, 10 feet, give or take.

15 THE WITNESS: I'm not good with distance. I'm
16 sorry.

17 Q. BY MR. LI: Obviously neither am I. As
18 you walked from where Miss Jobe was sitting in the
19 mud and over to the tent, were you able to see
20 around you?

21 A. Yes, sir.

22 Q. Were you able to hear?

23 A. Yes, sir.

24 Q. And based on that, walking from the sweat
25 lodge to where Miss Jobe was sitting, did you see

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1 people in medical distress?

2 A. I didn't notice anybody in medical
3 distress.

4 Q. And as you were sitting next to
5 Miss Jobe, who was lying in the mud -- first of
6 all, was she in medical distress?

7 A. No.

8 Q. Was the person sitting next to her in
9 medical distress?

10 A. No, sir.

11 Q. Was anyone around you in medical
12 distress?

13 A. No, sir.

14 Q. And as you walked from that location with
15 Miss Jobe and the other person lying in the mud
16 over to the tent, were there people in your way who
17 were in medical distress?

18 A. There were people laying there. I mean,
19 no, sir. We were all laying there being hosed off
20 and drinking water and --

21 Q. Did that look any different than your
22 son's football practices?

23 A. Well, they don't lay in the mud, but no.
24 I mean, they're hot and sweaty and getting water.
25 I mean, no.

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1 MR. LI: Your Honor, if I can grab some
2 photographs.

3 THE COURT: Okay.

4 MR. LI: These are exhibits 23 through 70
5 already previously admitted, actually except for 38
6 and 40 and 43 and 44. And at this time we'd move
7 to admit them. I think they're just photographs
8 that --

9 MS. POLK: Could you tell me the numbers of
10 the exhibits you're moving?

11 MR. LI: Sure.

12 MS. POLK: Are you asking me whether I object?

13 THE COURT: I have 38, 39, 40, 43 and 44 have
14 not been admitted. And you just asked for all but
15 40 to be admitted.

16 MR. LI: I'm sorry. 38 through 40 and 43
17 through 44.

18 THE COURT: Any objection to that?

19 MS. POLK: May I see them?

20 MR. LI: Of course. They're all in there.

21 MS. POLK: Your Honor, I have no objection.

22 Thank you.

23 MR. LI: Thank you, Counsel.

24 THE COURT: Then those exhibits are admitted.

25 38, 39, 40, 43 and 44.

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1 (Exhibits 38, 39, 40, 43 and 44
2 admitted.)

3 MR. LI: Thank you, Your Honor. If I may I
4 approach the witness?

5 THE COURT: Yes.

6 Q. BY MR. LI: I'm going to ask you to look
7 at just all of these. And look up when you're
8 done. Because I'll put them on a display device.

9 Thank you, ma'am. Have you had a chance
10 to review all of the photographs?

11 A. Yes, sir. I looked through them.

12 Q. Thank you. Do they accurately depict
13 what you saw at the Spiritual Warrior sweat lodge
14 in 2008?

15 A. Yes, sir.

16 Q. Now, I have used a term I probably should
17 define a little. I used the term "medical
18 distress" earlier when I was describing -- asking
19 whether you saw folks in medical distress. Let me
20 put a finer point on it. Did you see people
21 throwing up?

22 A. No, sir, I didn't.

23 Q. Did you see people in convulsions?

24 A. No, sir.

25 Q. Did you see people hallucinating?

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1 **A. No, sir.**
 2 **Q.** Did you see people crying?
 3 **A. Yes, sir.**
 4 **Q.** Now, were they crying out of pain?
 5 MS. POLK: Objection to foundation.
 6 THE COURT: Sustained.
 7 **Q.** BY MR. LI: Let me ask you. Did you cry
 8 at any point during the Spiritual Warrior exercise?
 9 **A. Yes, sir.**
 10 **Q.** And why did you cry?
 11 **A. There is a lot of emotion going on, a lot**
 12 **of stuff coming up. There was a lot of tears of**
 13 **happiness for me, for me.**
 14 **Q.** And after the 2008 sweat lodge, did you
 15 hear people crying out in pain?
 16 MS. POLK: Objection to foundation.
 17 THE COURT: Overruled. You may --
 18 THE WITNESS: I don't really understand.
 19 **Q.** BY MR. LI: Did you hear people crying
 20 out in pain, screaming?
 21 **A. You mean right after the sweat lodge?**
 22 **Q.** Yes.
 23 **A. No, sir.**
 24 **Q.** I'm going to show you some of these
 25 photographs. And if you could take a look at them
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1 and point out if you recognize some folks. And
 2 we'll just go through this. This is Exhibit 23 for
 3 the record.
 4 **A. Can I look here?**
 5 **Q.** Yeah. You can actually -- I think if you
 6 push on that, it makes a little mark.
 7 **A. What do you want me to do?**
 8 **Q.** If you can identify, first of all,
 9 where -- when you say you sat next to Christine
 10 Jobe, where that was.
 11 **A. It was here.**
 12 **Q.** That's good. That's how it's supposed to
 13 work. Now, is that Christine Jobe lying on the
 14 ground there?
 15 **A. I think that one is.**
 16 **Q.** And is that approximately where you sat
 17 for a little bit?
 18 **A. Yeah. I think I was, like, kind of on**
 19 **this side of Christine, not on the other side.**
 20 **Then I went over to the white tent over in there.**
 21 **They had towels and things down there. I don't**
 22 **like being in the mud.**
 23 **Q.** I'm going to put in front of you
 24 Exhibit 24. I don't know how to make that thing go
 25 away. There you go.
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1 Do you recognize any of these folks?
 2 **A. Yes, sir.**
 3 **Q.** Who do you recognize?
 4 **A. That's Wendy.**
 5 **Q.** Wendy. Do you remember her last name?
 6 **A. Benkowski or something like that.**
 7 **Q.** Did you have a chance to talk to her
 8 during this event?
 9 **A. Yes.**
 10 **Q.** How was she doing?
 11 **A. Fine.**
 12 **Q.** I'm going to put on the display
 13 Exhibit 25. Do you recognize any of these folks?
 14 **A. That's Julia and that's still Christine.**
 15 **Q.** Okay.
 16 **A. I think that's Christine. Looks like her**
 17 **bathing suit.**
 18 **Q.** I'm going to set Christine aside for a
 19 second. Julia. Did you have a chance to talk to
 20 her during this event?
 21 **A. The sweat lodge or the entire week?**
 22 **Q.** The sweat lodge.
 23 **A. I can't remember.**
 24 **Q.** Did she ever complain to you about the
 25 sweat lodge?
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1 **A. Not that -- no.**
 2 **Q.** I'm going to put on the display
 3 Exhibit 26. Do you recognize any of these folks?
 4 **A. That one is Winnie and Joe. His last**
 5 **name starts with an "F" foddy or something like**
 6 **that.**
 7 **Q.** Okay.
 8 **A. And then Wendy is still over there.**
 9 **Christine.**
 10 **Q.** Were they throwing up or in convulsions?
 11 **A. Any of those people?**
 12 **Q.** The two people you identified.
 13 **A. No.**
 14 **Q.** I'm going to put on the display
 15 Exhibit 27. Do you recognize these folks?
 16 **A. Those two ladies?**
 17 **Q.** Yes.
 18 **A. No. I mean, I recognize them, but I**
 19 **don't really know them. Janine is in the**
 20 **background.**
 21 **Q.** I'm going to put on the display -- I'm
 22 going to try to move through some of these. 32.
 23 Do you recognize this woman?
 24 **A. That's Susan McCuen.**
 25 **Q.** Was she -- did you have a chance to chat
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1 with her about the 2008 sweat lodge experience?
 2 **A. Well, yeah. We all talked about it at**
 3 **the closing ceremonies and stuff. I don't remember**
 4 **who I talked to right after except a few of them --**
 5 **Christine and Wendy, Rinette.**
 6 **Q.** Did she say that she had experienced
 7 something negative?
 8 **A. No, sir.**
 9 **Q.** This is Exhibit 33. First of all, do you
 10 recognize the woman who is lying down here?
 11 **A. I think that's Barb.**
 12 **Q.** Barb Waters?
 13 **A. Yes, sir.**
 14 **Q.** Have you had a chance to talk with her
 15 about the sweat lodge experience?
 16 **A. Yes, sir.**
 17 **Q.** After the sweat lodge?
 18 **A. Yes, sir.**
 19 **Q.** In 2008?
 20 **A. Yes, sir.**
 21 **Q.** And what did she say about it?
 22 MS. POLK: Objection, Judge, to the
 23 foundation.
 24 MR. LI: We just established talking.
 25 THE COURT: You said after some time frame,
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1 Mr. Li.
 2 MR. LI: I apologize.
 3 **Q.** Let's say during the Spiritual Warrior
 4 exercise -- during the Spiritual Warrior retreat
 5 after the exercise did you have a chance to talk to
 6 Barbara Waters?
 7 **A. I talked to Barbara when it was**
 8 **concluded.**
 9 **Q.** And what did she have to say about it?
 10 **A. Well, she didn't go to dinner, and she**
 11 **slept the whole day. And she said that they had to**
 12 **carry her out. But -- you know -- that's kind of**
 13 **it.**
 14 **Q.** Did she say she had had a terrible
 15 experience?
 16 **A. Oh, no. We've talked many times over the**
 17 **past years. I guess it has been years now. No.**
 18 **None of us had a bad experience of my group.**
 19 **Q.** Now I'm going to point you to another
 20 woman here. Do you recognize her?
 21 **A. Which one?**
 22 **Q.** Sorry. This woman here.
 23 **A. Carly.**
 24 **Q.** Carly?
 25 **A. Carly Shankman.**
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1 **Q.** And did she -- was she vomiting or --
 2 **A. I didn't see her vomiting. I didn't see**
 3 **her. No.**
 4 **Q.** I'm going to ask you to look at -- I'm
 5 placing on the projector Exhibit 38. Do you
 6 recognize anyone in this Exhibit 38?
 7 **A. Janine and Aaron.**
 8 **Q.** Which one is Aaron?
 9 **A. That one.**
 10 **Q.** And do you know who this person is?
 11 **A. That's Janine Wright.**
 12 **Q.** Janine Wright?
 13 **A. I think Wright's her last name.**
 14 **Q.** Okay. I'm going to put on the display
 15 Exhibit 40. Do you recognize anyone in this one?
 16 **A. That's Hermia. I can't see anyone else.**
 17 **Q.** There are other pictures. I'll move on.
 18 I'm going to -- I'm putting on the projector
 19 Exhibit 41. The two folks who are lying down there
 20 in the mud -- do you recognize them?
 21 **A. It's Christine.**
 22 **Q.** If you could put a little --
 23 **A. Christine.**
 24 **Q.** Do you know who the other person is?
 25 **A. I don't recognize her at all.**
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1 **Q.** Is this location that you were sitting
 2 close to?
 3 **A. Yes.**
 4 **Q.** Could you shows us approximately where
 5 you were sitting, if you recall.
 6 **A. Over in here.**
 7 **Q.** Right by where the hose is?
 8 **A. Yeah. In the mud.**
 9 **Q.** I'm going to put on the display
 10 Exhibit 42. Do you recognize this person?
 11 **A. I don't remember.**
 12 **Q.** Okay. I'm going to put on the display
 13 Exhibit 43. Do you recognize these folks?
 14 **A. Hermia. Looks like -- Hermia. Looks**
 15 **like Aaron back there, Janine and Penny. I think**
 16 **her name is Penny. I can't see that girl well**
 17 **enough to know who it is.**
 18 **Q.** Okay. I'm going to skip some photos
 19 here. I'm going to move to Exhibit 46. This one
 20 is Christine Jobe?
 21 **A. Yes. That one might be Gina. I can't**
 22 **tell with her hair like that.**
 23 **Q.** Which one might be Gina?
 24 **A. That might be Gina. But I can't tell.**
 25 **She's all wet -- her hair.**
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1 Q. Placing on the Exhibit No. 47 -- on the
 2 projector. Do you recognize him?
 3 A. **I recognize him, but I don't remember his**
 4 **name.**
 5 Q. Okay. Putting on the projector
 6 Exhibit 48.
 7 A. **That's Joe Foddy or Fody, something like**
 8 **that.**
 9 Q. Okay. Exhibit 53?
 10 A. **That's Tari. I think her name is Tari or**
 11 **Tori.**
 12 Q. Is she the pregnant woman?
 13 A. **Yes, sir.**
 14 Q. Placing on the exhibit -- the projector
 15 Exhibit 56. Do you recognize these folks?
 16 A. **That's Winnie back -- well, not that one.**
 17 **The one behind her. That's Winnie. And I think**
 18 **that's Rupel, Rupel Patel. I can't see the others**
 19 **well enough to.**
 20 Q. Placing on the projector Exhibit 57. Do
 21 you recognize these folks?
 22 A. **It's Winnie and Julia. I can't tell the**
 23 **other ones.**
 24 Q. And who is that next to her?
 25 A. **This one is Julia, and that one is**
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1 **Winnie.**
 2 Q. Julia. What's her last name?
 3 A. **I think it's Bunker, something like that.**
 4 Q. Bunker?
 5 A. **I think so. Names are not my strongest**
 6 **suit.**
 7 Q. There is another picture of her and
 8 another person.
 9 A. **That's Julia.**
 10 Q. Okay. I'm going to place on the
 11 projector Exhibit 59. Do you recognize these
 12 folks?
 13 A. **That's Sheryl.**
 14 Q. Sheryl. Do you know her last name?
 15 A. **I think it's Sheryl Sterns. She worked**
 16 **for James.**
 17 Q. I'm going to place on the projector
 18 Exhibit 62.
 19 A. **That's Tari.**
 20 Q. And she was the woman who was sitting
 21 next to you or lying next to you in the sweat
 22 lodge?
 23 A. **Yes, sir. Uh-huh.**
 24 Q. Placing on the projector Exhibit 63. Do
 25 you recognize these folks?

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1 A. **That's Rupel, and this is Ralph.**
 2 Q. Ralph. Do you know Ralph's last name?
 3 A. **That's Julia's husband. I think it's**
 4 **Bunker. I'm not sure of their last name. And then**
 5 **Winnie. And I guess that's Christine back there.**
 6 **Christine and Winnie. That's Tari.**
 7 Q. Now, you were able to observe all of
 8 these people at close range?
 9 MS. POLK: Objection to the leading question.
 10 THE COURT: Overruled.
 11 THE WITNESS: I interacted with them. Yeah.
 12 Q. BY MR. LI: Placing on the projector
 13 Exhibit 68. Do you recognize these folks?
 14 A. **That's Julia and Ralph.**
 15 Q. Bunker?
 16 A. **Hopefully.**
 17 Q. Now, if I could just point out, is this
 18 tent here -- do you recognize that tent?
 19 A. **Yeah. That's where I moved and sat under**
 20 **for a while.**
 21 Q. Placing on the projector -- placing on
 22 the projector Exhibit 40 -- 69. Sorry. Do you
 23 recognize these folks?
 24 A. **This is Wendy Benkowski.**
 25 Q. And do you know who the other person is
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1 off hand?
 2 A. **I remember her, but I don't remember her**
 3 **name.**
 4 Q. And last -- well, not last. I'm putting
 5 on the projector Exhibit 70. Do you recognize
 6 these folks?
 7 A. **Yes. My gosh. I can't remember her**
 8 **name.**
 9 Q. Were you able to interact with these
 10 folks, though?
 11 A. **Yes.**
 12 Q. Putting on the display Exhibit 39. Do
 13 you recognize anyone in this photograph that you
 14 haven't previously identified?
 15 A. **Yes. That's me.**
 16 Q. Indicating the woman in the black bathing
 17 suit standing near the tent. You had described
 18 your route towards the tent earlier. Is that you
 19 on your way?
 20 A. **Uh-huh. Or sometime. Yes.**
 21 Q. Now, after you walked over to the tent
 22 and got a drink of water and did the things you
 23 did, what did you do next?
 24 A. **Well, I sat in the tent for a while and**
 25 **just sat there. And then I thought about getting**

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1 **some fruit but I decided not to. And then I went**
 2 **back to the -- I left and took a shower and got**
 3 **ready for dinner -- or for the closing ceremony.**

4 Q. And what was taking place around you?

5 A. **The same thing. I mean, people laying in**
 6 **the water and walking out, getting their stuff**
 7 **together and going back to take showers and the**
 8 **same thing.**

9 Q. Did you see people smiling?

10 A. **Oh, yes.**

11 Q. Did you hear laughter?

12 A. **Uh-huh.**

13 Q. Cheers?

14 A. **Yeah.**

15 Q. Now, if I could move you to dinner time,
 16 when you went to dinner, this was after the event,
 17 the closing ceremonies?

18 A. **Well, the dinner was after the event**
 19 **before closing ceremonies.**

20 Q. Sorry. So at the dinner -- did the
 21 participants go to the dinner?

22 A. **Yes, sir.**

23 Q. How about your roommates? Did they go to
 24 the dinner?

25 A. **I think so. I don't remember right**

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1 **definitely, but probably.**

2 Q. Did you hear people complaining or --
 3 complaining about the sweat lodge?

4 MS. POLK: Objection. Leading, Judge.

5 THE COURT: Sustained.

6 Q. BY MR. LI: Were people talking about
 7 the sweat lodge?

8 A. **Yes.**

9 Q. How would you describe their
 10 conversations about the sweat lodge?

11 A. **The ones -- I mean, we were saying wow.**
 12 **I did it. That was hot. Glad that's over -- you**
 13 **know -- those kinds of things. Just not really --**
 14 **not really celebrating but -- you know -- we got**
 15 **that one under our belt type thing.**

16 Q. Describing accomplishment?

17 A. **Yes. Absolutely.**

18 MR. LI: If I may have one moment, Your Honor.

19 THE COURT: Yes.

20 MR. LI: I have nothing further, Your Honor.

21 THE COURT: Okay.

22 Ms. Polk, about 10 minutes or so or we
 23 can recess now.

24 MS. POLK: Your Honor, I have more than 10
 25 minutes.

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1 THE COURT: Let's go ahead and take the noon
 2 recess. And I'll want to remind Miss Wendt that
 3 the rule of exclusion of witnesses has invoked.
 4 That means you cannot talk about your testimony or
 5 the case with any other witnesses until this
 6 hearing is over. You can talk to the lawyers. I
 7 don't know that there are any other witnesses. But
 8 you just can't talk -- it's really a good idea not
 9 to talk to anyone else about your testimony or the
 10 case. Except you can talk to the lawyers.

11 Okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: We will resume. I do have that
 14 matter. I'll try to accelerate it. I'd like to
 15 start at 1:30. Try to move that other thing up a
 16 little bit.

17 Thank you.

18 You're excused.

19 (Recess.)

20 THE COURT: We're back on the record in State
 21 versus James Arthur Ray. The attorneys are all
 22 present. Ms. Wendt is on the witness stand again.

23 And, of course, you're still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Ms. Polk, you may cross-examine.

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1 MS. POLK: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. POLK:

4 Q. Good afternoon, Ms. Wendt.

5 A. **Good afternoon.**

6 Q. My name is Sheila Polk. I'm the
 7 prosecutor in the case. And you and I spoke by
 8 phone in June of this year. Do you recall that?

9 A. **Yes, ma'am.**

10 Q. At that time, Ms. Wendt, you told me that
 11 you had a good experience at the Spiritual Warrior
 12 Seminar? Is that correct?

13 A. **That's right.**

14 Q. And you also told me that you had a good
 15 experience inside the sweat lodge? This is in
 16 2008.

17 A. **Yes, ma'am.**

18 Q. Do you recall also telling me at that
 19 time that you don't remember much about the other
 20 participants in the sweat lodge ceremony because
 21 you were in your own little world?

22 A. **Yes, ma'am.**

23 Q. And do you recall also telling that to
 24 Detective Polling on November 13th of 2009 when you
 25 and he spoke?

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1 A. Yes, ma'am.

2 Q. And, in fact, you recall telling
3 Detective Polling in November of 2009 that you
4 don't really remember much because you were in your
5 own little world, in your own little thinking and
6 feeling and in your own little world? Does that
7 sound familiar?

8 MR. LI: Objection, Your Honor. Improper
9 impeachment. This is the same behavior that
10 Ms. Polk was objecting to earlier on my
11 cross-examination. There is no transcript in front
12 of her. We are not looking at a transcript. She
13 hasn't identified what she's talking about.

14 THE COURT: Sustained.

15 Q. BY MS. POLK: Ms. Wendt, tell the Court,
16 if you would, how much -- let's talk about the
17 sweat lodge and your comments that you were in your
18 own little world. What do you mean by that?

19 A. I was thinking about what was going on
20 with me, listening to my body, talking to some of
21 my friends, not paying attention to or not being
22 engrossed in everything else around me.

23 Q. And you started to say not paying
24 attention to what was around you. Is that also
25 true?

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1 A. Somewhat. I mean, I'm not close friends
2 with everybody at the whole event. So -- you
3 know -- I was probably focused on my group of
4 friends.

5 Q. In what year did you first meet James
6 Ray?

7 A. Probably 2007.

8 Q. Can you tell me how many events of James
9 Ray you have attended.

10 A. I've done all of his events.

11 Q. And how many would that be?

12 A. Five maybe. After -- I can't remember
13 them all. Harmonic Wealth I've done a couple
14 times. Quantum Leap, Practical Mysticism. I don't
15 remember the name of another one. About five.

16 Q. Where was the Harmonic Wealth held?

17 A. It's held different places. I think I
18 attended one in California. And I think I attended
19 one in Vegas.

20 Q. And how about Practical Mysticism. What
21 city was it in when you attended it?

22 A. Tahoe.

23 Q. Did you attend Modern Magic?

24 A. Yes.

25 Q. What city was that in when you attended?

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1 A. Modern Magic was in Hawaii.

2 Q. Are you a member of the World Wealth
3 Society?

4 A. Yes, ma'am.

5 Q. Will you tell The Court what that is.

6 A. It's a group of people who want to study
7 closer with James.

8 Q. A group of people who -- I'm sorry. I
9 didn't hear you.

10 A. Want to study closer with James.

11 Q. What do you do specifically to study
12 closer with -- you mean James Ray when you say
13 "James"?

14 A. Yes, ma'am.

15 Q. What do you do to study with him closer?

16 A. We get to go to the events as many times
17 as we want. We get to bring a guest with us. We
18 get to have materials, get all the materials. You
19 can -- there is a lunch that you can go to and ask
20 questions if you need further clarification. There
21 is a trip once a year that you can go on.

22 Q. With James Ray?

23 A. Yes, ma'am.

24 Q. How much does it cost to be in the World
25 Wealth Society?

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1 A. I think it was \$70,000 for two people.

2 Q. Is that what you paid?

3 A. Yes, ma'am.

4 Q. Did you pay for a second person?

5 A. We split it.

6 Q. You and a second person?

7 A. Yes, ma'am.

8 Q. Who was that?

9 A. Brenda Bowery.

10 Q. Is that a one-time payment?

11 A. No, ma'am.

12 Q. How frequently do you have to pay the
13 \$70,000?

14 A. It was every 15 months or something like
15 that.

16 Q. Do you know total how much you paid James
17 Ray to be in the World Wealth Society?

18 A. No, ma'am. Probably an exact amount, no,
19 ma'am.

20 Q. How about a rough amount?

21 A. Probably \$45,000, somewhere in there.

22 Q. For how many months -- do you belong to
23 the World Wealth Society today?

24 A. It's not around anymore.

25 Q. How many months did you belong to it?

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- 1 **A. From the beginning until the end.**
 2 **Q.** Which would be what month of what year?
 3 **A. It was in Vegas. Maybe November 2007**
 4 **maybe.**
 5 **Q.** Were you still a member in October of
 6 2009?
 7 **A. Yes, ma'am.**
 8 **Q.** In addition to paying the money, the
 9 45,000 to be part of the World Wealth Society, did
 10 you also pay to attend the various seminars that
 11 you attended?
 12 **A. No, ma'am. That was all part of it.**
 13 **Q.** It was all covered. So when you attended
 14 the Spiritual Warrior seminar in --
 15 **A. I did pay extra for that one.**
 16 **Q.** How much did you pay for that one? Was
 17 it close to \$10,000?
 18 **A. It was definitely under 10,000. I was**
 19 **thinking 7,500 but --**
 20 **Q.** So you paid to be in the World Wealth
 21 Society, and you also had to pay the Spiritual
 22 Warrior Seminar in 2008?
 23 **A. Yes, ma'am.**
 24 **Q.** Did you have to pay to attend any of the
 25 other seminars that you attended?

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- 1 **A. No, ma'am.**
 2 **Q.** That 45,000 -- you told us you paid
 3 approximately 45,000. How much total, then, have
 4 you paid to James Ray or JRI for seminars to be
 5 part of the World Wealth, to purchase his
 6 publications? What's your total financial
 7 investment in James Ray or JRI?
 8 **A. When you're in the World Wealth Society,**
 9 **you get all of the materials as part of that. So**
 10 **probably a little over \$50,000.**
 11 **Q.** When was the Modern Magic seminar in
 12 Hawaii?
 13 **A. I don't remember. Maybe April.**
 14 **Q.** Of what year?
 15 **A. I've been twice. I think probably April**
 16 **of '08.**
 17 **Q.** Did you attend it twice?
 18 **A. Uh-huh.**
 19 **Q.** Is that a yes?
 20 **A. Yes, ma'am. I'm sorry.**
 21 **Q.** And both times was it in Hawaii?
 22 **A. Yes, ma'am.**
 23 **Q.** Did you have to pay for your own
 24 transportation to get there?
 25 **A. Yes, ma'am.**

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- 1 **Q.** Did you also have to pay for your own
 2 food and lodging?
 3 **A. Yes, ma'am.**
 4 **Q.** What is it that you did not have to pay
 5 for, then, for that seminar because you're a member
 6 of the World Wealth Society?
 7 **A. The seminar.**
 8 **Q.** There is a fee for the seminar that's
 9 separate from food and lodging?
 10 **A. Yes, ma'am.**
 11 **Q.** You -- in your direct testimony you
 12 mentioned the physical challenges that were present
 13 in some of the seminars?
 14 **A. Yes, ma'am.**
 15 **Q.** Were they present in every seminar?
 16 **A. Yes, ma'am.**
 17 **Q.** You testified that you opted out of doing
 18 the tightrope?
 19 **A. Yes, ma'am.**
 20 **Q.** When was that?
 21 **A. In Tahoe, in Practical Mysticism.**
 22 **Q.** You testified that -- you were asked the
 23 question by Mr. Li, did James Ray mock people for
 24 not participating. And your response was well, he
 25 pushed people. What do you -- can you tell the

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- 1 Court what you mean by that.
 2 **A. You can do this. Come on. Give it your**
 3 **best. Step out of your comfort zone. Those are**
 4 **the things that come to my mind right off.**
 5 **Q.** Would you hear that frequently at James
 6 Ray events?
 7 **A. Yes, ma'am.**
 8 **Q.** That encouragement to push yourself
 9 physically?
 10 **A. I don't know -- yeah. I guess**
 11 **physically.**
 12 **Q.** Well, what would you say? I don't want
 13 to put words in your mouth.
 14 **A. Physically, but more -- you know --**
 15 **complete the exercise, participate fully. Those**
 16 **kind of things. Not all of it is physical. A lot**
 17 **of it is just sitting there writing and that kind**
 18 **of thing.**
 19 **Q.** Did Mr. Ray explain to you why he wanted
 20 you to participate fully?
 21 **A. I would guess to get what we came for, to**
 22 **discover more, to grow more, to learn more about**
 23 **ourselves.**
 24 **Q.** Why did you opt out of the tightrope
 25 event?

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1 **A. I just felt it was not right for me to**
 2 **do. There was something that said don't do it.**
 3 **Q. Were you frightened?**
 4 **A. Not too much of that one.**
 5 **Q. Were you frightened of other events?**
 6 **A. Yes, ma'am.**
 7 **Q. Tell me what events put on by James Ray**
 8 **frightened you.**
 9 **A. Pretty much all of them. Just -- just**
 10 **about all of them, everything that I did. I think**
 11 **that's one of the things that I was learning was**
 12 **that nothing was as great as my fear, in**
 13 **everything. Not just events, just everything.**
 14 **Q. Is that something that James Ray said to**
 15 **you, that nothing is as great as your fear?**
 16 **A. No, ma'am. F.D.R., Franklin Roosevelt.**
 17 **Q. And is that something that Mr. Ray**
 18 **referred to?**
 19 **A. That I don't remember.**
 20 **Q. It's possible that you got that from**
 21 **James Ray, that reference to F.D.R.?**
 22 **A. No. Mainly that's what I think about a**
 23 **lot in my life even before James Ray.**
 24 **Q. Okay. Did you participate in the Modern**
 25 **Magic event that consisted of trying to break a**
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1 cinder brick with your hand?
 2 **A. Yes, ma'am.**
 3 **Q. Did you break the cinder brick?**
 4 **A. No, ma'am.**
 5 **Q. How was your hand?**
 6 MR. LI: Objection, Your Honor. Relevance.
 7 THE COURT: Overruled.
 8 You may answer that.
 9 THE WITNESS: My hand was fine. I didn't hurt
 10 it. I mean, it felt like I'd hit a brick.
 11 **Q. BY MS. POLK: Did other people break**
 12 **their hands at that event that you were at?**
 13 **A. Yes, ma'am.**
 14 **Q. About how many people?**
 15 MR. LI: Objection, Your Honor. Relevance.
 16 THE COURT: Sustained.
 17 **Q. BY MS. POLK: Ms. Wendt, you testified on**
 18 **direct that you attended the Spiritual Warrior**
 19 **Seminar in 2008 here in the Sedona area against**
 20 **your doctor's advice?**
 21 **A. Yes, ma'am.**
 22 **Q. What were you suffering from?**
 23 **A. An upper respiratory.**
 24 **Q. And you had gone to the doctor for that**
 25 **--**

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1 **A. Yes, ma'am.**
 2 **Q. -- illness? Did the doctor have you on**
 3 **medication?**
 4 **A. No, ma'am.**
 5 **Q. What were the symptoms of your upper**
 6 **respiratory illness?**
 7 **A. Coughing and not feeling well, sinus**
 8 **infection.**
 9 **Q. You had a sinus infection as well?**
 10 **A. Yes, ma'am.**
 11 **Q. And the doctor told you not to come to**
 12 **the Spiritual Warrior Seminar?**
 13 **A. No. He didn't tell me not to. He told**
 14 **me that I needed to rest and take lots of fluids.**
 15 **I told him I was going out of town. He said well,**
 16 **airplane rides are dehydrating, those kind of**
 17 **thing.**
 18 **Q. Your doctor was concerns about**
 19 **dehydration and it's impact on your illness?**
 20 **A. My sinuses.**
 21 **Q. Your sinuses. Did you tell the doctor**
 22 **that one of the events you would be participating**
 23 **in in the Spiritual Warrior event was a sweat lodge**
 24 **event?**
 25 **A. No, ma'am.**
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1 **Q. That's because you did not know that at**
 2 **the time?**
 3 **A. No, ma'am.**
 4 **Q. Did you know ahead of time you would be**
 5 **participating in the Vision Quest event where you**
 6 **would not have food or water for 36 hours?**
 7 **A. Yes. I think I heard that.**
 8 **Q. Did you tell the doctor that?**
 9 **A. No, ma'am.**
 10 **Q. When you went inside the sweat lodge to**
 11 **participate in the ceremony in 2008, had you told**
 12 **James Ray that you were suffering from an upper**
 13 **respiratory illness?**
 14 **A. No, ma'am.**
 15 **Q. And, in fact, no health questionnaires**
 16 **were obtained from participants from Mr. Ray, is**
 17 **that true?**
 18 **A. We filled out a whole bunch of**
 19 **questionnaires. I don't remember if there was a**
 20 **health. I think we had to say we were in good**
 21 **health.**
 22 **Q. You think so?**
 23 **A. I think so.**
 24 **Q. But you're not sure?**
 25 **A. No, ma'am.**

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1 Q. And would there be any documents you
2 could look at to refresh your recollection about
3 that?

4 A. **Maybe if I still have them.**

5 Q. Did you tell -- assuming that you filled
6 out something that said were you in good health,
7 what did you put on it in terms of your upper
8 respiratory illness?

9 A. **I probably didn't -- I mean, by the time
10 I got there I was feeling fine. I really don't
11 know.**

12 Q. Were you no longer sick by the time you
13 got there?

14 A. **There is sick and then there is
15 allergies. I have a lost allergies. And to me
16 it's a way of life for me with my allergies. So I
17 was -- probably still had a little sinus infection
18 and -- but nothing that I really noticed.**

19 Q. Do you think you had a sinus infection
20 when you went inside the sweat lodge?

21 A. **Not at that time. No.**

22 Q. You think were you healthy by then?

23 A. **Yes, ma'am.**

24 Q. You testified about the samurai games
25 that were conducted at some point at the Spiritual
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1 Warrior Seminar in 2008. What was the point of
2 that game? Do you know?

3 A. **I believe it was living your life with
4 integrity, kind of a lesson in seeing when we're
5 not in integrity and when we are, how we can work
6 with a team.**

7 Q. And in that game James Ray played God?

8 A. **Yes, ma'am.**

9 Q. What did he do as God?

10 A. **He condemned people to die.**

11 Q. He condemned people to die --

12 A. **When they broke the rules.**

13 Q. How did he do that?

14 A. **I think he pointed to them and said die.**

15 Q. What did a participant do when they were
16 condemned by James Ray to die?

17 A. **They laid down on the ground.**

18 Q. They were instructed to lay down on the
19 ground?

20 A. **Yes, ma'am.**

21 Q. How long did they then have to stay on
22 the ground?

23 A. **Until it was over.**

24 Q. How many hours did that game last for?

25 A. **Several. But I don't remember how many.**

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1 **Several.**

2 Q. In fact, did it go into the evening?

3 A. **It was into evening.**

4 Q. And, in fact, certain participants who
5 were deemed dead by James Ray had to continue to
6 lie there when other participants left. Do you
7 recall that?

8 A. **When they left?**

9 Q. Some were allowed to go to dinner, and
10 some participants were still dead and had to stay
11 dead on the floor?

12 A. **I think so. Yes, ma'am.**

13 Q. And, in fact, some participants missed
14 dinner because they had been condemned to die by
15 James Ray?

16 A. **Yes, ma'am.**

17 Q. Was the theme of death a theme that was
18 part of the Spiritual Warrior Seminar all week?

19 A. **I don't -- I don't know that it was -- I
20 remember more rebirth. You're shedding your past
21 and you're being reborn.**

22 Q. In what sense? What did that mean to
23 you?

24 A. **Well, we did a lot of dredging up our
25 past and writing and remembering and things that we**

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1 **wanted to make amends for in our life and that kind
2 of thing. And we wrote that for many days, for
3 several days. Kind of going into myself and
4 seeing -- you know -- like, how I felt about my
5 mother and my family. And even though wonderful
6 family, there is issues and -- you know -- I kind
7 of got rid of some of that stuff.**

8 Q. Did you consider the week to be about you
9 and your personal experiences?

10 A. **Yes, ma'am.**

11 Q. As opposed to being a week about making
12 new friends and connections and networking?

13 A. **I made great friends there. I don't know
14 too much about networking. I don't understand that
15 part.**

16 Q. Okay. Was the week about letting people
17 have their own experiences to work through issues?

18 A. **Yes.**

19 Q. In fact, do you recall situations where
20 somebody might have a breakdown, might be crying
21 about something and James Ray telling participants
22 leave them alone? They're having their own
23 experience?

24 A. **Yes, ma'am.**

25 Q. Did that happen on several occasions?

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1 A. Yes, ma'am.

2 Q. And that's because people were examining
3 themselves and confronting issues and it was very
4 emotional?

5 A. Yes, ma'am.

6 Q. And although in normal situations, if
7 somebody is crying or appears to be in distress,
8 you might normally reach out to help them; this
9 week was about letting them have their own
10 experience and working through it?

11 A. Well, yes. But he would also assign a
12 Dream Team member or somebody to work with that
13 person, just not another participant to do that.

14 Q. And, in fact, participants were told
15 leave them alone? The Dream Team will deal with
16 them?

17 A. Right then, yes.

18 Q. In other words, you weren't encouraged
19 through the week to reach out and help people who
20 were in distress?

21 MR. LI: Objection to the use of the term
22 "distress" it's vague and ambiguous.

23 THE COURT: You may answer that if you can.

24 THE WITNESS: I don't know that -- I don't
25 know that that's necessarily true. My roommate was
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1 struggling. She and I talked it through. You
2 know, there were certain times that you let the
3 Dream Team person work with that person. And then
4 there was times when you could talk about it among
5 yourselves.

6 Does that make sense?

7 Q. BY MS. POLK: It does. And who
8 determined those times? Who determined when you
9 would leave people alone or when it would be time
10 to talk with somebody else about what you were
11 experiencing?

12 A. I guess after the activities -- you
13 know -- after we were done with the activities.

14 Q. So it would be James Ray who would
15 determine the events and what you were supposed to
16 be doing at the time?

17 A. In general, yes, ma'am.

18 Q. You mentioned that you were told
19 repeatedly by James Ray to hydrate throughout the
20 week. Do you recall that testimony?

21 A. Yes, ma'am.

22 Q. And, in fact, your testimony was that
23 James Ray said hydration comes from the days
24 beforehand and not the day of?

25 A. Yes, ma'am.

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1 Q. What does that mean?

2 A. Well, to me it means, I guess because
3 where I come from, it's important to hydrate all
4 the time. Don't just drink a bunch of water and
5 think that you're hydrated. Hydrate daily.

6 Q. In other words, it's not enough to just
7 hydrate for a few hours before an event. You have
8 to come to it that day hydrated?

9 A. I would say so.

10 Q. And yet you testified that just prior to
11 doing the sweat lodge ceremony, you went 36 hours
12 without food and without water?

13 A. Yes, ma'am.

14 Q. You testified that you were taking salt?

15 A. Yes.

16 Q. Who told you to take salt?

17 A. James. James Ray.

18 Q. Did he tell all the participants to take
19 salt?

20 A. Yes.

21 Q. Did he provide you with the salt?

22 A. Yes, ma'am.

23 Q. What kind of salt did he provide you
24 with?

25 A. I don't remember the name of it. It
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1 wasn't table salt. But I don't remember.

2 Q. It was a special salt that he had?

3 A. I don't know. I mean, it was in our bag.

4 I don't know.

5 Q. Did James Ray tell you how much salt to
6 take?

7 A. Tablespoon.

8 Q. How frequently?

9 A. Daily.

10 Q. How much salt do you normally take --
11 intake whether you eat?

12 A. I don't know. Probably a lot.

13 Q. Did James Ray ever tell you that excess
14 salt can actually lead to dehydration?

15 A. I think I know that. I don't know if I
16 heard that from James or just knowing it.

17 Q. You testified about going into the sweat
18 lodge for a ceremony and that you -- that it was a
19 surprise. You did not know it was coming. Is that
20 true?

21 A. Yes, ma'am.

22 Q. How many minutes or hours before the
23 sweat lodge ceremony did you know you were going to
24 do a sweat lodge?

25 A. I don't know. Maybe a couple of hours,
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1 **an hour. I don't remember.**
 2 Q. Just an hour about?
 3 A. **An hour or two maybe.**
 4 Q. And how did you feel about going into a
 5 sweat lodge?
 6 A. **Fine.**
 7 Q. You felt fine?
 8 A. **Yes, ma'am.**
 9 Q. You went in with a positive attitude?
 10 A. **I think so. A little nervous. I was**
 11 **nervous being here. But -- you know -- just a**
 12 **little nervous but --**
 13 Q. Before going into the sweat lodge, you
 14 told us that there was a meeting where James Ray
 15 told all the participants what to expect. Do you
 16 recall that?
 17 A. **Uh-huh.**
 18 Q. Where did that meeting take place?
 19 A. **Probably in the meeting room, I think.**
 20 Q. Among the things that James Ray told
 21 participants at that presweat lodge meeting, you
 22 told us he talked about how you would feel like
 23 you're going to die?
 24 A. **Yes, ma'am.**
 25 Q. What did he -- did James Ray say to you
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1 about feeling like you're going to die?
 2 A. **He said that there would be times when**
 3 **you felt like you were going to die. Push through,**
 4 **give it your all. Those kinds of things.**
 5 Q. So James Ray said even if you feel like
 6 you're going to die, you need to push through it?
 7 A. **Well, I didn't take it as literal. I**
 8 **took it more as a metaphor. That's how I took it.**
 9 **You'll feel like your going to die, you're not**
 10 **going to make it. You'll come back. I never took**
 11 **it that he meant I was actually going to die.**
 12 Q. Did you take it you might physically feel
 13 like you're going to die?
 14 A. **No, I didn't.**
 15 Q. So you took it as a metaphor?
 16 A. **Yes, ma'am.**
 17 Q. A metaphor for what?
 18 A. **That I was going to get emotional, that I**
 19 **was going to maybe have a breakdown or a break**
 20 **through or -- you know -- start crying or -- you**
 21 **know -- those kind of things.**
 22 Q. Did James Ray tell you that it would be
 23 hot?
 24 A. **Yes, ma'am.**
 25 Q. How hot did say it would be?
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1 A. **Very hot.**
 2 Q. Those were his words, just very hot?
 3 A. **I don't remember exactly. I remember it**
 4 **as it's going to be very hot.**
 5 Q. Did he tell you that some of you might
 6 reach an altered state in the sweat lodge?
 7 A. **Yes, ma'am.**
 8 Q. What did he say about that?
 9 A. **I think just about that -- you know --**
 10 **stay seated. If you're going to leave, leave when**
 11 **the flap is up. You know. I don't remember him**
 12 **going into a whole lot of detail about that.**
 13 Q. Do you remember him using the words
 14 "altered state"?
 15 A. **Probably.**
 16 Q. Did he talk about achieving an altered
 17 state throughout the week?
 18 A. **For the sweat lodge?**
 19 Q. Throughout the Spiritual Warrior week did
 20 he in general talk about reaching an altered state?
 21 A. **I don't remember altered state -- him**
 22 **talking about altered states up until the sweat**
 23 **lodge. No. Maybe during the breath work time. I**
 24 **don't know. It was more inner thought, working**
 25 **through yourselves like that, sitting out in the**
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1 **Vision Quest. There wasn't any altered states in**
 2 **any of that.**
 3 Q. Was there any altered state involved with
 4 the breath work?
 5 A. **There could be.**
 6 Q. When did you do breath work?
 7 A. **I think that was the night before the**
 8 **Vision Quest.**
 9 Q. Tell the Court what the breath work was
 10 about.
 11 A. **You breathe deeply and quickly for**
 12 **several hours, and then you stop.**
 13 Q. What was supposed to happen because of
 14 the deeply -- the breath work?
 15 A. **I don't think you really -- it just takes**
 16 **you wherever you want it to be taken, wherever you**
 17 **go. When I did mine, I thought I was there for 20**
 18 **minutes. And I thought well, I wonder why I cut it**
 19 **short. Then I realized it had been about two**
 20 **hours. So --**
 21 Q. So you said when you did the breath work,
 22 you thought were you there for about 20 minutes
 23 and, in fact, two hours had passed?
 24 A. **Yes, ma'am.**
 25 Q. You thought were you there meaning in the
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1 room? Or what do you mean by that?

2 **A. That we'd been doing it for about 20**
3 **minutes.**

4 **Q.** Did you achieve an altered state doing
5 the breath work?

6 **A. I remember hearing things that were going**
7 **on, thinking about other things, but I really**
8 **thought it had only been about 20 minutes. I**
9 **didn't feel like I was an altered state.**

10 **Q.** What does an "altered state" mean to you?

11 **A. Not really focused on what's -- being a**
12 **little more free, kind of letting myself experience**
13 **what comes to me. Those kind of things.**

14 **Q.** In an altered state is it fair to say you
15 are less aware of your surroundings?

16 **A. Probably.**

17 **Q.** Probably?

18 **A. Or maybe more sometimes. I don't know**
19 **that answer.**

20 **Q.** Well, when you did the breath work and
21 you thought two hours -- 20 minutes had passed and,
22 in fact, two hours had passed, had you entered a
23 realm where you were less aware of what was going
24 on around you?

25 **A. Well, I don't -- I guess maybe I was in**
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1 **an altered state. But I was very aware of the**
2 **conversations that were going on around me. I was**
3 **very aware of when people walked by me. I mean, I**
4 **know that sounds kind of unusual. But when I was**
5 **doing that, I was very aware of those kinds of**
6 **things.**

7 **So I don't know that altered states means**
8 **that I'm not aware of what's going on. I think it**
9 **might -- could sometimes and sometimes it might**
10 **mean that you're more aware of what's going on**
11 **around you.**

12 **Q.** Okay. And when you did the breath work,
13 were you hyperventilating?

14 **A. Probably.**

15 **Q.** When James Ray did the meeting with the
16 participants before going into the sweat lodge in
17 2008, did he mention that if people passed out that
18 they would be dragged out?

19 **A. Maybe. I don't --**

20 **Q.** It's possible?

21 **A. I don't remember that but --**

22 **Q.** Is it possible that he said that?

23 **A. I don't know. Maybe.**

24 **Q.** And did James Ray say that if you pass
25 out, you won't die? Do you recall that?

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1 **A. I do not recall that. I thought I was**
2 **going to be doing an obstacle course. I really**
3 **did.**

4 **Q.** Okay. Do you recall James Ray telling
5 you that it would be a very healthy experience?

6 **A. I don't remember his exact words. I**
7 **mean, what I got from it was the whole week was a**
8 **healthy experience because we were going to be**
9 **going inside and -- you know -- purging up things**
10 **that we didn't really want to purge up and doing a**
11 **lot of self-reflection and that kind of thing.**

12 **So I don't remember the world "healthy."**
13 **But if he did say that, that's what I took it as.**
14 **Nothing about my physical health.**

15 **Q.** Let's talk about inside the sweat lodge,
16 then. You left after the third round?

17 **A. Yes, ma'am.**

18 **Q.** And how long were you out for?

19 **A. A full round.**

20 **Q.** A full round?

21 **A. Yes, ma'am.**

22 **Q.** You went back in for the fifth round?

23 **A. Yes, ma'am.**

24 **Q.** And there were two more rounds after
25 that?

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1 **A. Yes, ma'am.**

2 **Q.** How many rounds total were there?

3 **A. I don't really remember. I'm sorry.**

4 **Q.** Do you remember how long in terms of
5 minutes or hours the sweat lodge ceremony was?

6 **A. I don't think it was hours, but I don't**
7 **really remember how long it was.**

8 **Q.** About how many -- you think it was less
9 than one hour?

10 **A. No. I think it was between one and two**
11 **hours.**

12 **Q.** You testified about a woman who was
13 pregnant. Do you recall her name?

14 **A. I think it's Tari.**

15 **Q.** Do you recall her last name?

16 **A. No, ma'am.**

17 **Q.** Would it be Tari Coffey? Does that ring
18 a bell or not?

19 **A. I don't remember.**

20 **Q.** And you testified when you went back in
21 at the fifth round, you actually laid down next to
22 the woman who was pregnant?

23 **A. Yes, ma'am.**

24 **Q.** Do you recall that woman who was pregnant
25 lifting up the edge of the sweat lodge during the

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1 ceremony to get air?
 2 **A. Maybe.**
 3 **Q.** And, in fact, were you near that area
 4 where she was lifting the edge to get air?
 5 **A. I might have been. When you're laying**
 6 **there, your head --**
 7 **Can I do that?**
 8 **Q.** Yes.
 9 **A. You're laying there and your head is like**
 10 **this. So -- you know -- you have your eyes closed**
 11 **and your hands -- your face down. I had my nose**
 12 **kind of in between my hands. Does that make sense?**
 13 **Q.** Yes. But in spite of that, it's your
 14 testimony that you possibly recall the pregnant
 15 woman lifting the edge to get air?
 16 **A. I think she might have told me that. I**
 17 **can't remember if I -- I think she might have told**
 18 **me that.**
 19 **Q.** At the time or later?
 20 **A. Later.**
 21 **Q.** And let me go back to the round that you
 22 were outside the sweat lodge. That would have been
 23 the fourth round. Does that sound right?
 24 **A. Yes, ma'am.**
 25 **Q.** You said that there were 10 to 15 of you
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1 outside the sweat lodge at that point?
 2 **A. Yes, ma'am.**
 3 **Q.** And that you all held hands to hold
 4 space?
 5 **A. Some of us. Yes, ma'am.**
 6 **Q.** What does that mean?
 7 **A. We stood around and just kind of held**
 8 **hands and was quiet.**
 9 **Q.** Why did you do that?
 10 **A. Just to be respectful of the people**
 11 **inside the sweat lodge and what they were going**
 12 **through.**
 13 **Q.** And then when you went back in, you also
 14 laid down next to Christine Jobe?
 15 **A. Yes.**
 16 **Q.** Did Christine stay in the whole time?
 17 **A. No, ma'am.**
 18 **Q.** When did she get out?
 19 **A. I don't know when she got out. I think**
 20 **she was out when I came out. I don't know if she**
 21 **came out or she'd already been out. I don't know**
 22 **that.**
 23 **Q.** It's your belief she did not stay in the
 24 whole time?
 25 **A. No. She was outside with me. So --**
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1 **Q.** Okay. And then the two of you went back
 2 in together?
 3 **A. Yes. But I don't know when she came out.**
 4 **Q.** Did she still stay to the end?
 5 **A. Yes, ma'am.**
 6 **Q.** With you?
 7 **A. Yes, ma'am.**
 8 **Q.** I'm going to take some time to look at
 9 some of the photographs. While this is warming up,
 10 let me ask you, Ms. Wendt, approximately how many
 11 minutes went by from the time you got out of the
 12 sweat lodge and you went walking to the white tent?
 13 **A. I would say 15 maybe, somewhere in there.**
 14 **Q.** 15 minutes? And what did you do during
 15 those 15 minutes?
 16 **A. Had water sprayed on me, drank some**
 17 **water, sat there. You know -- just sat there.**
 18 **Q.** How would you describe your state -- your
 19 condition at that time, your state of mind, your
 20 condition?
 21 **A. Hot. My legs were weak. Just kind of**
 22 **quiet. I don't know. Just kind of quiet. Really**
 23 **hot.**
 24 **Q.** Do you know what hyperthermia is?
 25 **A. No.**
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1 **Q.** Pardon me?
 2 **A. Not specifically. But yeah. I've heard**
 3 **of it in movies and things like that.**
 4 **Q.** Would you agree that hyperthermia --
 5 MR. LI: Objection. Relevance.
 6 THE COURT: Overruled.
 7 **Q.** BY MS. POLK: Ms. Wendt, would you agree
 8 that hypothermia -- hyperthermia is elevated body
 9 temperature when the body -- caused by the body
 10 producing or absorbing more heat than it can expel?
 11 MR. LI: Objection. Foundation.
 12 THE COURT: I don't know that she knows that.
 13 You may answer that if you can.
 14 THE WITNESS: I don't know that I can sit here
 15 and say yes, that's what that is.
 16 **Q.** BY MS. POLK: And are you aware that
 17 symptoms of hyperthermia include being dizzy?
 18 MR. LI: Objection. Foundation, relevance.
 19 THE COURT: And I think she couldn't even say
 20 if she knew what hyperthermia was. So sustained.
 21 **Q.** BY MS. POLK: Did you experience
 22 dizziness when you got out of the sweat lodge?
 23 **A. I don't know if -- I don't think I was**
 24 **dizzy. I was light headed. I don't think I was**
 25 **dizzy. My legs were weak.**
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- 1 Q. You felt weak? Were you sweating?
 2 A. **Yes, ma'am.**
 3 Q. And do you recall if you had a weakened
 4 pulse?
 5 A. **No, ma'am. No.**
 6 Q. You don't recall?
 7 A. **No. I don't think I had a weakened**
 8 **pulse. I don't remember -- I mean no.**
 9 Q. Did you feel giddy?
 10 A. **Giddy?**
 11 Q. Giddy.
 12 A. **No, ma'am.**
 13 Q. Did you feel disoriented?
 14 A. **No, ma'am. Light headed but not**
 15 **disoriented.**
 16 Q. Did you feel that you need to sit down,
 17 you needed to sit down?
 18 A. **Yes, ma'am.**
 19 Q. And that's because you felt fatigued or
 20 weak?
 21 A. **Yes, ma'am.**
 22 Q. And it's your testimony that it was about
 23 15 minutes that you laid down in the mud?
 24 A. **If that long, yes.**
 25 Q. And then you walked over to the white
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- 1 tent?
 2 A. **Yes, ma'am.**
 3 Q. I'm going to put up on the overhead
 4 Exhibit 28. This is a photograph you've already
 5 seen.
 6 A. **Uh-huh.**
 7 Q. And will you show us where you are in
 8 this photograph.
 9 A. **Back in the back.**
 10 Q. And that's when you're on your way to the
 11 white tent?
 12 A. **Maybe. Yeah.**
 13 Q. So 15 minutes?
 14 A. **I'd already gotten my water bottle. So I**
 15 **had to have gone over and gotten my stuff.**
 16 Q. You had your water bottle in your hand
 17 here?
 18 A. **Yes, ma'am.**
 19 Q. Where was that water bottle?
 20 A. **It was over here kind of out by the edge**
 21 **right there.**
 22 Q. And then after getting the water bottle
 23 you went over to the tent?
 24 A. **I think so.**
 25 Q. So you would agree at least 15 minutes
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- 1 had gone by before -- from the end of the sweat
 2 lodge to the time this photograph was taken?
 3 A. **Probably. I don't know the exact number**
 4 **of minutes, but a few minutes.**
 5 Q. Was it your testimony earlier that at
 6 some point you were lying down next to that woman
 7 there?
 8 A. **I was sitting next to her.**
 9 Q. And point to me where you were sitting.
 10 A. **Right over here by Christine.**
 11 Q. So by the time this photograph is taken,
 12 you've already gotten up, walked over, gotten your
 13 water bottle and you're on your way to the tent?
 14 A. **Yes, ma'am.**
 15 Q. When you went to get your water bottle,
 16 did you walk over people?
 17 A. **Or through them. Maybe not over them but**
 18 **out towards the edge. I was sitting on a chair.**
 19 Q. Did you ever pay any attention to this
 20 lady right here? Do you know who that is?
 21 A. **No, ma'am. I don't know who that is.**
 22 Q. Did you notice that in the photographs
 23 that Mr. Li showed you during cross -- during your
 24 direct examination that that lady remains curled up
 25 in that fetal position?
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- 1 A. **She's on her knees. Yes, ma'am.**
 2 Q. You don't know who she is?
 3 A. **No, ma'am.**
 4 Q. Did you ever go check up on here?
 5 A. **No, ma'am.**
 6 Q. Did you know if she was in medical
 7 distress or not?
 8 A. **No, ma'am.**
 9 Q. Do you know who this person is lying
 10 right here?
 11 A. **No, ma'am.**
 12 Q. Did you ever go over to check up on that
 13 person?
 14 A. **No, ma'am.**
 15 Q. Do you know if that person was in any
 16 form of distress?
 17 A. **No, ma'am.**
 18 Q. Did you ever talk to that person after
 19 the event?
 20 A. **I don't know who that is.**
 21 Q. Do you know who this person is lying
 22 right there?
 23 A. **Yes, ma'am.**
 24 Q. Who is that?
 25 A. **Wendy.**
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1 Q. Wendy?
 2 A. Wendy.
 3 Q. Did you ever talk to Wendy?
 4 A. Yes, ma'am.
 5 Q. When did you talk to her?
 6 A. Before leaving the area.
 7 Q. When did you leave the area? Are you
 8 talking about at the sweat lodge ceremony --
 9 A. Yes, ma'am.
 10 Q. So before you went back to your room, you
 11 checked up on Wendy?
 12 A. I don't know about checking up. She's
 13 one of my best friends. So I just was talking to
 14 her.
 15 Q. Did you room with her?
 16 A. No, ma'am.
 17 Q. And when you talked to her, how did she
 18 seem?
 19 A. Fine.
 20 Q. She had recovered from whatever symptoms
 21 she had experienced?
 22 MR. LI: Objection, Your Honor. Misstates the
 23 evidence, assumes facts not in evidence.
 24 THE COURT: Sustained.
 25 Q. BY MS. POLK: How aware were you when you
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1 came out of the sweat lodge of other participants?
 2 A. I'm not sure I understand. I mean, I
 3 looked for my friends, and I saw people. I don't
 4 know --
 5 Q. When you interviewed -- were interviewed
 6 by Detective Polling on November 13, 2009, and you
 7 told him that you were in your own little world and
 8 there wasn't a lot that you remembered?
 9 A. I looked -- I looked for my friends --
 10 you know. I have certain group of friends, and
 11 it's kind of like that eye-to-eye thing. Like,
 12 sitting down next to Christine but then leaving.
 13 It was just -- that's my world. My friends are my
 14 world. I'm -- I wasn't really -- I guess I wasn't
 15 really paying attention to other people, just
 16 looking for my friends.
 17 Q. And how many friends did you have at this
 18 event?
 19 A. Quite a few.
 20 Q. How many?
 21 A. I don't know the exact number.
 22 Q. When you tell us that you made eye-to-eye
 23 contact with your friends when you came outside the
 24 sweat lodge, how many people are you talking?
 25 A. Probably four or five.

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1 Q. Can you tell me their names.
 2 A. Christine.
 3 Q. And Christine is in this photo?
 4 A. Yes.
 5 Q. Will you point to her out to me.
 6 Christine and who else?
 7 A. Wendy.
 8 Q. Okay.
 9 A. Who I talked to right after. I mean, I
 10 remember I talked to Rupel. When it was I don't
 11 know. I'll have to sit and think who all I talked
 12 to.
 13 Q. But at least three people you made
 14 eye-to-eye contact with at some point?
 15 A. Yeah. I was looking for my friends.
 16 Q. I understand.
 17 A. Just -- not checking up on them. Just--
 18 you know -- I was looking for my group.
 19 Q. Would you agree that there were about 65
 20 participants at that sweat lodge ceremony?
 21 A. Somewhere in there.
 22 Q. Would you agree when, on direct
 23 examination from Mr. Li, you talked about people
 24 not being in distress, that you didn't really have
 25 a chance to check up on all 65 of the people?
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1 A. I didn't -- I mean, I wouldn't. It
 2 didn't even check up. I wouldn't even think about
 3 checking up on people. Does that make sense?
 4 Q. Yes.
 5 A. I mean --
 6 Q. It's a fair statement that you had your
 7 own experience in the sweat lodge?
 8 A. Yes, ma'am.
 9 Q. And you came out and you are still in
 10 somewhat of a different state of mind, perhaps an
 11 altered state?
 12 A. Kind of an euphoric state.
 13 Q. A euphoric state. And when you come out,
 14 you're not really focused on the other 64
 15 participants?
 16 A. I see them. I mean, I don't know -- was
 17 I looking at each individual one intently, that
 18 kind of thing? No, ma'am.
 19 Q. Now, are you aware that -- did you know
 20 Ted and Debby Mercer?
 21 A. No. I don't.
 22 Q. Were you aware there was a fire tender
 23 and door keeper at the sweat lodge ceremony?
 24 A. I think I heard those words.
 25 Q. You wouldn't be able to identify today

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1 who those two individuals are?

2 **A. No, ma'am.**

3 **Q.** You're aware they were there?

4 **A. Those two people?**

5 **Q.** Yes.

6 **A. I don't know. I mean, no, I don't.**

7 **Q.** Would you agree that individuals who are

8 outside of the sweat lodge would be more aware of

9 the surroundings than individuals who didn't

10 participate in the sweat lodge ceremony -- but were

11 outside the entire time would be more aware of the

12 surroundings than somebody who had just experienced

13 the sweat lodge?

14 **MR. LI:** Objection. Argumentative.

15 **THE COURT:** I think she asked the question as

16 far as her experience might be. But in terms of

17 what other people might experience, sustained.

18 **Q.** **BY MS. POLK:** And I'm going to put up on

19 the overhead Exhibit 23 you.

20 **THE COURT:** Ms. Polk, I know you said that,

21 but could you tell me what the exhibit number is on

22 the one you just took off, please.

23 **MS. POLK:** Actually, I believe this is

24 Exhibit 28.

25 **THE COURT:** Thank you.

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1 **Q.** **BY MS. POLK:** Do you see yourself in this
2 photograph, Ms. Wendt?

3 **A. No, ma'am.**

4 **Q.** Would you agree that by the time this
5 photograph is taken you've already at least gone
6 over to the white tent?

7 **MR. LI:** Objection. Lack of foundation. How
8 could we tell from this photograph what sequence
9 and when this was taken?

10 **THE COURT:** I don't know if that can be
11 answered from this photograph.

12 **Ma'am,** if you can answer that.

13 **Overruled.**

14 **You can answer if you're able to.**

15 **THE WITNESS:** I wish I could give you a time
16 line of everything I did when I came out of that,
17 but I can't. I can tell you what I did. But
18 exactly when and, I mean, every little thing -- I
19 just can't.

20 **Q.** **BY MS. POLK:** It's a bit fuzzy for you?

21 **A. It was a long time go, two years ago.**

22 **Q.** When you first came out of the sweat
23 lodge, how much times passed from the time you came
24 out to the time you laid down on the ground at this
25 position over by Christine?

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1 **A. You know, there again, I hate limiting**
2 **myself by giving you a time. I really don't know.**
3 **I came out and sat down right away. But I really**
4 **don't know.**

5 **Q.** When you sat down right away, did you sit
6 down in that position that I just marked?

7 **A. Probably.**

8 **Q.** And there you got up, got your water
9 bottle?

10 **A. Probably.**

11 **Q.** And then you walked over to the white
12 tent?

13 **A. Probably. I mean, I wish I could be more**
14 **exact.**

15 **Q.** Would you agree that you are not in this
16 photograph that's marked as Exhibit 23?

17 **A. Uh-huh.**

18 **Q.** Is that yes?

19 **A. Yes, ma'am. I apologize.**

20 **Q.** And would you agree in this photograph
21 that the woman in the fetal position is still in
22 that fetal position?

23 **A. Yes, ma'am.**

24 **Q.** I'm going to put up in the overhead
25 Exhibit 24. Do you see that same woman who now

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1 appears to be on her side?

2 **A. Yes, ma'am.**

3 **Q.** Does she appear to be awake to you?

4 **MR. LI:** Objection. Lack of foundation,
5 Speculation.

6 **THE COURT:** The photo speaks for itself for
7 purposes of this. So sustained.

8 **Q.** **BY MS. POLK:** Do you know how long
9 Christine stayed lying down in that mud?

10 **A. No, ma'am.**

11 **Q.** When did you next see Christine?

12 **A. Probably -- I don't know if I saw her at**
13 **dinner but definitely at the closing ceremony.**

14 **Q.** So you didn't see her until the closing
15 ceremony?

16 **A. I don't really remember. Went and took a**
17 **shower -- you know -- journaled some. I wasn't --**
18 **I burned my tobacco pouches. I mean, I don't**
19 **remember exactly the time line of everything.**

20 **Q.** I'm going to put up on the overhead
21 Exhibit 25. Is that Christine or is that somebody
22 else still lying there?

23 **A. Looks like Christine.**

24 **Q.** Do you know whether she was dizzy?

25 **MR. LI:** Objection. Lack of foundation,

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1 speculation.

2 THE COURT: It's a yes or no. If she can
3 answer that, she may.

4 THE WITNESS: I don't know if she was dizzy.
5 Christine. She's -- I mean, I don't know if she
6 was dizzy. She loves to do -- she is a country
7 girl. She loves the mud. She loves the dirt.
8 That's just Christine. What can I say? If she was
9 dizzy, I don't know.

10 Q. BY MS. POLK: Would you agree that you
11 don't know whether Christine was dizzy, whether she
12 had a weakened pulse, whether she had a rapid heart
13 rate, whether she felt weak, whether she was
14 profoundly sweating, whether she was fatigued or
15 disoriented? Would you agree that you don't know
16 any of --

17 MR. LI: Objection. Compound, argumentative,
18 lacks foundation, relevant.

19 THE COURT: How did the question end the
20 last --

21 Overruled.

22 You may answer that.

23 THE WITNESS: Well, I talked to her
24 afterwards. I talked to her during all this. She
25 was laughing and talking. I did not have any

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1 indication that she was anything.

2 Q. BY MS. POLK: Okay.

3 A. **I mean, she wanted to splash in the mud**
4 **with me. And I'm, like, ugh. No. I know I wasn't**
5 **all -- I don't like mud.**

6 Q. I'm going to put up on the overhead
7 Exhibit 26 and ask you if you know what was going
8 on back in this corner. Do you see that group of
9 people behind of people standing?

10 A. **No, ma'am.**

11 Q. Were you ever aware of what was going on
12 there?

13 A. **No, ma'am.**

14 Q. I'm going to put up on the overhead
15 Exhibit 32 and again direct you to this back
16 corner. Do you have any recall today of what was
17 going on in that back corner?

18 A. **No, ma'am. I was not part of that.**

19 Q. Let me put up on the overhead Exhibit 31.
20 Do you know who that man is?

21 A. **No, ma'am.**

22 Q. You don't recognize him at all?

23 A. **I really don't. I probably should but I**
24 **don't. That's Marta next to him.**

25 Q. Point to me Marta.

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1 A. **It looks like Marta.**

2 Q. And do you recall her last name?

3 A. **No, ma'am.**

4 Q. Was Marta part of James Ray's staff?

5 A. **Yes, ma'am.**

6 Q. She was, in fact, an employee of James
7 Ray?

8 A. **I think she worked with a sound company**
9 **that he employed. I think. I'm not sure.**

10 Q. Would you agree that these people are
11 hovered over somebody who appears to be in
12 distress?

13 MR. LI: Objection. Relevance, lack of
14 foundation, speculation.

15 THE COURT: Sustained.

16 Q. BY MS. POLK: Ms. Wendt, it's your
17 testimony today that you were not aware when you
18 came outside the sweat lodge that a group of people
19 was hovered over somebody who was on the ground?

20 A. **Yes, ma'am.**

21 Q. You were not aware of it then?

22 A. **No, ma'am.**

23 Q. And you certainly don't recall it today?

24 A. **No. I'm looking at pictures and stuff,**
25 **but do I remember or can I comment on it while I**

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1 **was there? No, ma'am.**

2 Q. Either one?

3 A. **No, ma'am.**

4 Q. Okay. Let me put up on the overhead
5 Exhibit 30. Do you know who that woman in pink is?

6 A. **No, ma'am.**

7 Q. You don't recognize her at all?

8 A. **No, ma'am.**

9 Q. As a participant at the sweat lodge
10 ceremony that you were in?

11 A. **No, ma'am.**

12 Q. Someone that you spent how many days
13 with?

14 A. **Five.**

15 Q. Five?

16 A. **No, ma'am.**

17 Q. Would you agree that this woman appears
18 to be in medical distress?

19 MR. LI: Objection. Lack of foundation,
20 speculation.

21 THE COURT: I think I know what Ms. Polk is
22 asking the question. The way it's phrased -- I can
23 look at the picture. So the photograph speaks for
24 itself. For that specific question the objection
25 is sustained.

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1 Q. BY MS. POLK: Miss Wende, you testified
2 on direct examination that nobody around you was in
3 distress. Do you recall that testimony?
4 A. I did not see anybody in distress. I
5 mean, when we were there, everybody was coming
6 over, giving you water. I mean -- you know -- I
7 was not aware that people were in distress. I
8 mean, they came by and sat by me and gave me water,
9 asked if I wanted fruit. Does that make sense? I
10 mean, it just --
11 Q. Well, would you agree that people were in
12 distress? You just were not aware of it?
13 MR. LI: Objection. I'm sorry. Was that a
14 hypothetical or is that assuming facts not in
15 evidence? I didn't know if there was an "if"
16 before that.
17 THE COURT: I don't know what the basis of
18 knowledge would be. Sustained on that specific
19 question.
20 Q. BY MS. POLK: It's your testimony today
21 that you were never aware of this woman shown in
22 this photograph?
23 A. I don't remember that woman.
24 Q. Is it possible that some of those 65
25 participants were, in fact, throwing up and you

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1 weren't aware of it?
2 MR. LI: Objection. Calls for speculation.
3 THE COURT: Overruled.
4 THE WITNESS: It's possible.
5 Q. BY MS. POLK: And is it possible that
6 some of those 65 participants were unconscious and
7 you were not aware of it?
8 A. It's possible.
9 Q. And is it possible that some of those 65
10 participants were convulsing and you were not aware
11 of it?
12 A. It's possible.
13 Q. I'm going to put up on the overhead
14 Exhibit 33. Do you recognize the woman in the pink
15 bathing suit?
16 A. Looks like Barbara.
17 Q. Barbara. Do you know her last name?
18 A. Waters.
19 Q. Would you agree that Barbara Waters is
20 not awake in that photograph?
21 MR. LI: Objection. Lack of foundation, calls
22 for speculation. The picture speaks for itself.
23 THE COURT: I see the appearance. Sustained.
24 Q. BY MS. POLK: Were you aware of Barbara
25 Waters after you got out of the sweat lodge

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1 ceremony?
2 A. Not at that time.
3 Q. Were you aware of her before you left the
4 area of the sweat lodge ceremony to go back to your
5 room to shower?
6 A. Not at that -- no.
7 Q. You weren't aware of Barbara at all?
8 A. No, ma'am.
9 Q. And you were not aware of Barbara lying
10 on the ground not awake?
11 MR. LI: Objection. First part okay. Second
12 part calls for speculation, assumes facts not in
13 evidence.
14 THE COURT: I think the "not awake" part is
15 what you're objecting to.
16 MR. LI: Yes, Your Honor.
17 THE COURT: Leaving that part out, the rest of
18 the question can stand.
19 And you may answer that.
20 THE WITNESS: We were all laying on the
21 ground. I mean, we were all laying on the ground.
22 I guess I didn't really --
23 Q. BY MS. POLK: So lots of people were
24 laying on the ground around you?
25 A. Uh-huh.

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1 Q. And lots of people could have been
2 unconscious?
3 MR. LI: Objection. Calls for speculation.
4 THE COURT: Hypothetical. Overruled.
5 You may answer that.
6 THE WITNESS: I guess. You know, we were all
7 laying on the ground in the water and stuff.
8 Q. BY MS. POLK: Well, you were lying on the
9 ground for a while. And you got up, got your
10 water, went to the tent, and then you went back to
11 your room?
12 A. I laid down in the tent for a while. I
13 don't like being wet.
14 Q. And then you -- it was only later that
15 you learned that Barbara Waters actually had to be
16 carried out of the sweat lodge?
17 A. Right.
18 Q. And you learned that from her?
19 A. Probably. Yes.
20 Q. Probably or did you?
21 A. I might have heard it at the sweat
22 lodge -- not the sweat lodge but dinner or closing
23 ceremony. I can't remember exactly. I had many
24 conversations with Barbara afterwards.
25 Q. Are you friends with Barbara?

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- 1 A. Yes, ma'am.
- 2 Q. And Barbara is part of the World Wealth
- 3 Society as well?
- 4 A. Yes, ma'am.
- 5 Q. When is the last time you had contact
- 6 with Barbara Waters?
- 7 A. Probably April.
- 8 Q. Of this year?
- 9 A. Probably. Maybe a little later.
- 10 Q. What was the context of your contact with
- 11 Barbara?
- 12 A. We went to a meeting.
- 13 Q. Conducted by whom?
- 14 A. James.
- 15 Q. James Ray conducted a meeting in April of
- 16 this year?
- 17 A. I think it was April.
- 18 Q. Of 2010?
- 19 A. Yes, ma'am.
- 20 Q. Where did he conduct that meeting?
- 21 A. In California, his house.
- 22 Q. What was the purpose of the meeting?
- 23 A. It was kind of a closure thing. The
- 24 people were upset that the WWS wasn't around
- 25 anymore. So he was just kind of letting everybody

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- 1 know it was over.
- 2 Q. Did he reimburse any fees to you?
- 3 A. No, ma'am.
- 4 Q. How many people attended that meeting in
- 5 April?
- 6 A. A handful, maybe 10 to 15. Somewhere in
- 7 there. I don't remember. I mean, a group of us.
- 8 Q. How long did that meeting last for?
- 9 A. We were there a few hours for a couple of
- 10 days. You know. We went there for a few hours on
- 11 one day and a few hours the next day.
- 12 Q. At his house?
- 13 A. Yes, ma'am.
- 14 Q. Did James Ray discuss the sweat lodge
- 15 ceremony from 2009 during that meeting?
- 16 A. No, ma'am. Not really. I don't remember
- 17 him talking about it.
- 18 Q. Did he discuss the sweat lodge ceremony
- 19 from 2008?
- 20 A. I don't think we really talked about the
- 21 sweat lodges. No, ma'am.
- 22 Q. At that meeting or over the course of two
- 23 days, he disbanded the World Wealth Society?
- 24 A. I think it was kind of disbanded
- 25 beforehand. He was just trying to give us back

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- 1 something -- you know -- see how he could help us
- 2 or things like that.
- 3 Q. Did he say how it was that he could help
- 4 you?
- 5 A. No. I mean, we were just -- he would
- 6 work with you if you wanted or answer anything
- 7 about any of the events -- you know -- if you
- 8 wanted to conclude any of that have stuff that you
- 9 built up or came up for you. Does that make sense?
- 10 But just -- he just kind of wanted a concluding
- 11 meeting type of thing. Or actually, people wanted
- 12 it.
- 13 Q. Had you been corresponding with him prior
- 14 to the April meeting?
- 15 A. No, ma'am.
- 16 Q. How did you know about the April meeting?
- 17 A. Christine Jobe.
- 18 Q. Did what?
- 19 A. Notified us.
- 20 Q. Does she work for James Ray?
- 21 A. No, ma'am.
- 22 Q. How did she know about the meeting? Do
- 23 you know?
- 24 A. I think she kind of formalized it, I
- 25 think.

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- 1 Q. I'm going to put up on the overhead
- 2 Exhibit 41, which is -- show me again which one is
- 3 Christine. Would you.
- 4 A. That one.
- 5 Q. And the lady next to her?
- 6 A. I can't tell. It might be Gina. But I
- 7 can't tell.
- 8 Q. And let me direct your attention to the
- 9 lady in the green shorts who is in the background.
- 10 Do you see her?
- 11 A. Yes, ma'am.
- 12 Q. And there is another woman next to her
- 13 still lying down?
- 14 A. Yes, ma'am. And Wendy. Yes, ma'am.
- 15 Q. Who is this lady right there that I just
- 16 pointed to?
- 17 A. I can't tell.
- 18 Q. You can't tell?
- 19 A. Everybody has their hair cut and they're
- 20 muddy. They're wet. There is no make up. They're
- 21 so out of context -- you know -- it's hard to tell
- 22 who they are. I know Christine and Wendy and the
- 23 people that I'm really good friends with. But the
- 24 others that I'm acquaintances with, it's hard for
- 25 me to recognize them.

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1 Q. So you're not good friends with this
2 lady?

3 A. Which one?

4 Q. And you don't know who the lady with the
5 green shorts is?

6 A. I've never really seen her face. I've
7 just seen parts of her body.

8 Q. In fact, would you agree that she -- in
9 all the photographs you've seen, she is still
10 curled up in a fetal position?

11 MR. LI: Objection. Pictures speak for
12 themselves, calls for speculation. Also move to
13 strike the word "still."

14 THE COURT: Overruled.

15 You may answer that, if you can.

16 THE WITNESS: She's still over there. Yes,
17 ma'am.

18 Q. BY MS. POLK: Do you know who this woman
19 is who is still lying down?

20 A. I can't tell. It might be Wendy. I
21 can't tell.

22 Q. And would you agree, Ms. Wendt, that you
23 don't know when this exhibit, this photograph, was
24 taken?

25 A. Yes.

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1 Q. And would you agree that you are not in
2 the picture?

3 A. Yes.

4 Q. Do you know how many people were still
5 around the area when you went back to your room to
6 shower?

7 A. There were several.

8 Q. Several. Well, we started with about 65
9 participants. When you left to go shower, can you
10 estimate for us how many were still there?

11 A. No, ma'am. I just know people. I don't
12 remember the --

13 Q. Do you know approximately how many
14 minutes passed before you left the area to go
15 shower from the time you got out of the sweat
16 lodge?

17 A. I don't. I -- the most freeing thing for
18 me for the whole week was that I didn't have a
19 clock or a watch. You know. I just had time. So
20 I don't -- it's really hard for me to put a
21 measurement of time on it.

22 Q. What had you all been told about going
23 back to the room after the sweat lodge ceremony?

24 A. What had we been told?

25 Q. Well, in terms of timing. Were you told

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1 to go when you were ready? Were you told to go in
2 30 minutes?

3 A. No. Just to go when you were ready.

4 Q. Let me put up on the overhead Exhibit 53.
5 Would you agree that this photograph shows somebody
6 leaving the area?

7 A. Yes, ma'am.

8 Q. And would you agree that this -- there
9 appear to be fewer people in this photograph than
10 in the earlier photographs?

11 A. Yes, ma'am.

12 MR. LI: Objection. The -- it's shot in a
13 greatly different --

14 THE COURT: Sustained.

15 Q. BY MS. POLK: Miss Wendt, you were shown
16 numerous photographs by Mr. Li on direct
17 examination. Do you recall that?

18 A. Yes, ma'am.

19 Q. And would you agree with me that you
20 don't know how many minutes after the sweat lodge
21 ceremony any of those photographs were taken?

22 A. Yes, ma'am.

23 Q. You would agree with me?

24 Do you know Sheryl Stern?

25 A. Yes, ma'am.

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1 Q. And tell the Court who Sheryl Stern was.

2 A. She worked for James Ray.

3 Q. Have you seen her since that Spiritual
4 Warrior Seminar in 2008?

5 A. I don't know. I mean, I don't know when
6 the last time I saw her was.

7 Q. I'm going to put up on the overhead
8 Exhibit 59. Do you see Sheryl Stern in that
9 photograph?

10 A. Yes, ma'am.

11 Q. Will you show us where she is.

12 Are you -- do you know whether Sheryl
13 Stern stayed in the sweat lodge ceremony the entire
14 time?

15 A. I don't know.

16 Q. Do you recall seeing Sheryl when you got
17 out of the sweat lodge ceremony?

18 A. I don't remember her.

19 Q. You don't remember seeing her at all?

20 A. I went looking for her.

21 Q. Were you aware that Sheryl Stern pulled
22 four people out of the sweat lodge because they
23 were so weak?

24 MR. LI: Objection. Assumes facts not in
25 evidence, calls for speculation, lack of

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1 foundation, argumentative.

2 THE COURT: Ms. Polk, response?

3 MS. POLK: Your Honor, the facts are in
4 evidence. This one refers to Exhibit 117 that has
5 been admitted at Bates stamp No. 998. That's the
6 interview of Sheryl Stern.

7 And this is appropriate

8 cross-examination. Mr. Li has tried to establish
9 through the direct examination of this witness that
10 there were no people in distress. And what I'm
11 covering with this witness is that she simply was
12 unaware that there were people in distress.

13 THE COURT: And it's, of course, this is --
14 it's to the Court. I'll overrule the objection in
15 this context.

16 And you can answer if you can.

17 THE WITNESS: I did not see Sheryl pulling
18 anybody from the sweat lodge.

19 Q. BY MS. POLK: Did you know a man named
20 John DiMartino?

21 A. No. I don't think so.

22 Q. Did you ever become aware of a man
23 screaming, who was hysterical, screaming for his
24 girlfriend who was still inside the sweat lodge
25 ceremony?

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1 A. No.

2 Q. You were never aware of that?

3 A. (No audible response.)

4 Q. Did you know a woman named Michelle
5 Goulet?

6 A. Yes, ma'am.

7 Q. And did you know she was there with her
8 boyfriend?

9 A. I don't remember if she was there with
10 her boyfriend.

11 Q. Were you ever aware that Sheryl Stern
12 from the outside was lifting up the edge of the
13 canvas to allow air to the people inside?

14 A. No, ma'am.

15 Q. Did you know somebody named Mary?

16 A. Mary.

17 Q. Did you know a participant named Mary?

18 A. Not off the top of my head.

19 Q. Do you know Cynthia Manner?

20 A. I'm so bad with names. Not right off.
21 I'm sorry.

22 Q. Were you aware, Ms. Wendt, that somebody
23 was taking photographs of the participants after
24 the sweat lodge ceremony was over?

25 A. Yes, ma'am.

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1 Q. Who was that?

2 A. I don't remember. Maybe I just heard it
3 and saw them on the website, Facebook or something.

4 Q. You saw these photographs on the website?

5 A. I don't think I saw these. I just heard
6 there were pictures and some people had taken
7 pictures of it.

8 Q. Do you recall who you heard that from?

9 A. No.

10 Q. Did you know a woman named Susan Smyser?

11 A. Yes, ma'am.

12 Q. And was she one of your friends?

13 A. She became one later. Yes, ma'am.

14 Q. Have you talked to Susan about her
15 experience in the sweat lodge?

16 A. No, ma'am.

17 Q. So she became a friend later, but you've
18 never talked to her about what happened to her in
19 2008?

20 A. Not really.

21 Q. Did Susan ever tell you that she believes
22 she almost died inside that sweat lodge ceremony?

23 A. No.

24 Q. Susan ever tell you that it took her two
25 weeks before she felt okay after that ceremony?

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1 A. No.

2 Q. Now, you talked about after the ceremony
3 was over showering, going down for dinner and
4 sitting with your group and talking. Was that your
5 testimony on direct examination?

6 A. No. I sat by myself. There were
7 people -- everybody was just kind of talking. I
8 was by myself.

9 Q. It's your testimony you sat by yourself?

10 A. I think so. I'm sure I sat with
11 somebody. I just don't know really -- it wasn't --
12 I don't remember who. I just sat down and ate.

13 Q. Right. You were not in the mood to talk
14 to other people?

15 A. Correct. I did some but --

16 Q. In fact, you were still having your own
17 experience from the sweat lodge carrying it forward
18 to the closing ceremony?

19 A. Sure.

20 Q. You talked about Julia Bunker and her
21 husband. I'm going to put up on the overhead
22 Exhibit 68. Is that Julia and her husband?

23 A. Julia and Ralph.

24 Q. His name is Ralph?

25 A. Yes.

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1 Q. And Bunker, as you recall, is their last
2 name?
3 A. **I think so.**
4 Q. Did you know that Julia Bunker took notes
5 throughout the entire week of the Spiritual Warrior
6 Seminar?
7 MR. LI: Objection. Assumes facts not in
8 evidence, timing, lack of foundation.
9 THE COURT: Whether she did --
10 She may answer that if she knows.
11 THE WITNESS: I didn't know.
12 Q. BY MS. POLK: Did you ever see Julia
13 Bunker's notes --
14 A. **No.**
15 Q. -- taken. You've never seen any notes
16 by Julia Bunker?
17 A. **No, ma'am.**
18 Q. When was the meeting after the sweat
19 lodge ceremony to talk about what happened in the
20 sweat lodge ceremony?
21 A. **That night.**
22 Q. Was that the closing ceremony you
23 referred to?
24 A. **Yes, ma'am.**
25 Q. How long was that meeting for?
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1 A. **As long as you wanted to be there.**
2 Q. Where was that held?
3 A. **In the meeting room.**
4 Q. Did you go to that?
5 A. **Yes, ma'am.**
6 Q. How long did you stay?
7 A. **A while.**
8 Q. Meaning an hour? two hours?
9 A. **We were all taking pictures and that kind**
10 **of stuff and talking about what we were going to do**
11 **next and where we were going to go and that kind of**
12 **thing. I hung around for a while.**
13 Q. Well, at some point was there a time when
14 you sat down and talked about the sweat lodge
15 experience?
16 A. **What do you mean? Like amongst my**
17 **friends and stuff?**
18 Q. No. I'm sorry. Was there a time that
19 you sat down with James Ray and talked about the
20 sweat lodge experience?
21 A. **Well, he talked -- what did he talk**
22 **about? Yeah. He talked a little bit about it. I**
23 **don't really remember --**
24 Q. When did he talk about it?
25 A. **At the beginning of the closing ceremony.**
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1 Q. And you were there for that?
2 A. **Yeah.**
3 Q. Do you recall James Ray talking about
4 being willing to push through the pain and
5 discomfort in the sweat lodge?
6 A. **I kind of remember that about a lot of**
7 **times with him. But maybe specifically the sweat**
8 **lodge.**
9 Q. Do you recall James Ray saying you have
10 to be willing to push through, you have to be
11 willing to not get out?
12 A. **I don't remember those exact words, but**
13 **probably.**
14 Q. He could have said that? You have to be
15 willing to not get out of the sweat lodge?
16 A. **I don't remember that. But to me**
17 **that's -- to me it's just encouragement. I mean, I**
18 **got out. I never thought I couldn't get out.**
19 Q. It's possible James Ray said that? You
20 have to be willing not to get out?
21 A. **I don't remember that. I'm sorry. I**
22 **mean, I don't know. Maybe.**
23 MS. POLK: Thank you, Miss Wendt.
24 Thank you, Judge.
25 THE COURT: Thank you, Ms. Polk.
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1 Mr. Li, we'll take the recess before
2 redirect. About 20 after.
3 Thank you.
4 (Recess.)
5 THE COURT: The record will show the presence
6 of the attorneys, the witness. Ms. Wendt is on the
7 witness stand.
8 And Mr. Li, you may redirect.
9 MR. LI: Thank you, Your Honor. It's going to
10 be quick.
11 REDIRECT EXAMINATION
12 BY MR. LI:
13 Q. Good afternoon, Ms. Wendt?
14 A. **Good afternoon.**
15 Q. In your cross-examination with Ms. Polk,
16 you mentioned that James Ray events were
17 frightening. Did you mean that in a physical
18 sense? an emotional sense? Both? What did you
19 mean by that?
20 MS. POLK: Objection. Leading.
21 THE COURT: Overruled.
22 You may answer that.
23 THE WITNESS: Both.
24 Q. BY MR. LI: And focusing on the emotional
25 side, what did you mean by -- how can an event be
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1 emotionally frightening?
2 **A. Because I was going there to learn things**
3 **about myself that were uncomfortable.**

4 **Q.** And focusing for a second on the physical
5 aspects, take the sweat lodge, were there aspects
6 of the sweat lodge that were frightening as well?

7 **A. Truly unknown is always frightening.**

8 **Q.** And was one of the purposes -- tell me
9 what the purposes of these seminars was, relating
10 to frightening things.

11 **A. Well, for me it was to show me that**
12 **I'm -- I can do anything and that there is -- this**
13 **is for me, that there is nothing as great as my**
14 **fear itself. You know.**

15 **Q.** You have nothing to fear but fear itself?

16 **A. Yes.**

17 **Q.** Mr. Ray didn't come up with that, did he?

18 MS. POLK: Objection. Leading, Judge.

19 THE COURT: Sustained.

20 **Q.** BY MR. LI: Do you know who name came up
21 with you have nothing to fear but fear itself?

22 **A. F.D.R.**

23 **Q.** Franklin Delano Roosevelt?

24 **A. Yes.**

25 **Q.** If we can focus on the Samurai Game.

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1 Ms. Polk asked you some questions about Mr. Ray,
2 quote, unquote, "condemning people to death" do
3 you recall that line of questioning?

4 **A. Yes, sir.**

5 **Q.** Did anybody at all in the ceremony
6 actually think they were being condemned to death?

7 MS. POLK: Objection. Foundation.

8 THE COURT: Sustained.

9 **Q.** BY MR. LI: Did you think that you were
10 actually being condemned to death?

11 **A. No, sir.**

12 **Q.** Did you think that any of the other
13 people who were playing this exercise were, in
14 fact, being condemned to death?

15 **A. No, sir.**

16 **Q.** Did anyone around you act as if they
17 believed they had just been condemned to death?

18 MS. POLK: Objection. Speculative.

19 THE COURT: Overruled.

20 You may answer.

21 THE WITNESS: No, sir. Nobody acted that way.

22 **Q.** BY MR. LI: Did the people who were on
23 your team take the game or the exercise seriously?

24 MS. POLK: Objection. Foundation.

25 THE COURT: Sustained.

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1 **Q.** BY MR. LI: Did they appear to take it
2 seriously?

3 MS. POLK: Same objection.

4 THE COURT: Sustained.

5 **Q.** BY MR. LI: Did you take it seriously?

6 **A. Well, I was in the exercise.**

7 **Q.** Did you think it was silly?

8 **A. Yes.**

9 **Q.** Did other people roll their eyes?

10 **A. Yes.**

11 **Q.** I'm going to ask you a few questions
12 about the sweat lodge ceremony and what happened
13 afterwards. Now, you left the sweat lodge?

14 **A. Yes, sir.**

15 **Q.** And then where did you walk?

16 **A. I went out and sat down on the ground.**

17 **Q.** Next to Miss Jobe? And I believe on
18 direct you said that was approximately from me to
19 you, indicating about 15 feet?

20 **A. Somewhere in there.**

21 **Q.** And as you walked from the gate or the
22 exit of the sweat lodge to Miss Jobe, were you able
23 to see?

24 **A. Yes, sir.**

25 **Q.** Were you able to hear?

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1 **A. Yes, sir.**

2 **Q.** Did you see or hear anybody in
3 convulsions?

4 **A. No, sir. Not to my knowledge.**

5 **Q.** Did you see or hear anybody unconscious?

6 **A. I didn't notice anybody.**

7 **Q.** Did you see or hear anybody in --
8 screaming out in pain?

9 **A. I didn't notice any.**

10 **Q.** Then you sat with Miss Jobe for some
11 period of time?

12 **A. Some time.**

13 **Q.** As you were sitting next to Miss Jobe,
14 were you able to see and hear?

15 **A. Yes, sir. I was talking to Christine.**

16 **Q.** And did you observe anybody -- as you
17 were sitting there talking to Christine, did you
18 observe anybody in convulsions?

19 **A. I didn't see anybody in convulsions.**

20 **Q.** Did you observe anybody unconscious?

21 **A. No, sir.**

22 **Q.** Did you see anybody that you believed
23 needed assistance?

24 **A. Not that I noticed.**

25 **Q.** And then after you sat with Miss Jobe,

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1 you then walked over to the tent, correct?

2 **A. Yes, sir.**

3 **Q.** And as you walked from the tent or from
4 where Miss Jobe was to the tent -- strike that.

5 How far is it from where Miss Jobe was to
6 the tent?

7 **A. Probably to the wall. Somewhere in**
8 **there.**

9 **Q.** That's approximately 20 feet. I know
10 I've already done this exercise. I think it's
11 about 20 feet.

12 As you walked from Miss Jobe to -- strike
13 that.

14 I think you also went and got your water
15 bottle?

16 **A. I think so.**

17 **Q.** As you walked over to get your water
18 bottle, did you see anybody in convulsions?

19 **A. I didn't notice anybody in convulsions.**

20 **Q.** Did you see anybody lying unconscious?

21 **A. People were lying on the ground. I did**
22 **not notice anybody unconscious.**

23 **Q.** Did you see anybody that you believed
24 needed your assistance?

25 **A. No, sir.**

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1 **Q.** And then you walked over from where the
2 water bottles were to the tent?

3 **A. Yes, sir.**

4 **Q.** And as you walked from where the water
5 bottle was to the tent, did you see anybody you
6 felt you needed to assist?

7 **A. If I did, I would have. I mean, no, sir.**

8 **Q.** If you had seen somebody who needed
9 assistance, would you have helped them?

10 **A. Sure.**

11 **Q.** I'm going to move to the end of the sweat
12 lodge, all of it, and then the ceremony that
13 evening. You went to the ceremony?

14 **A. Yes, sir.**

15 **Q.** Were people talking around you?

16 **A. Yes, sir.**

17 **Q.** And they were talking about all sorts of
18 things?

19 **A. Yes, sir.**

20 **Q.** Their experiences at the retreat?

21 **A. Yes, sir.**

22 **Q.** Did they talk about their experiences on
23 the Vision Quest?

24 **A. Yes, sir.**

25 **Q.** About their experiences in the Samurai

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1 Game?

2 **A. Yes, sir. All of it.**

3 **Q.** Experiences at the sweat lodge?

4 **A. Sure.**

5 **Q.** During the course of those conversations
6 that you overheard, did you hear anybody say I was
7 unconscious?

8 **A. No.**

9 **Q.** Did you hear anyone say I was in
10 convulsions?

11 **A. No.**

12 **Q.** Did you hear anyone say I needed medical
13 distress?

14 **A. No.**

15 **Q.** I'm sorry. I think I misspoke. Did you
16 hear anyone say I was in medical distress?

17 **A. No.**

18 **Q.** I needed medical aid?

19 **A. No.**

20 **Q.** You didn't hear any of that?

21 **A. I didn't hear any of that.**

22 MR. LI: I have nothing further, Your Honor.

23 THE COURT: Thank you, Mr. Li.

24 Thank you, Ms. Wendt.

25 May this witness be excused?

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1 MR. LI: Yes, Your honor.

2 MS. POLK: Yes, Your Honor.

3 THE COURT: You are excused at this time.

4 Thank you.

5 (The witness leaves the room.)

6 MR. LI: Two housekeeping matters.

7 THE COURT: Sure.

8 MR. LI: We marked and have shown the state
9 two exhibits -- exhibits 131 and 132. 131 is a
10 transcript of Dr. Mosley. 132 is an audiotape,
11 audio CD, of Dr. Mosley in an interview conducted
12 several months ago. We'd move for its admission,
13 both of the exhibits.

14 THE COURT: Okay.

15 Ms. Polk?

16 MS. POLK: No objection, Judge.

17 THE COURT: Exhibits 131 and 132 are admitted.

18 (Exhibits 131 and 132 admitted.)

19 MR. LI: We'd also move exhibits 122 through
20 126. 123 -- sorry. 124, 124, 125, 126. These are
21 transcripts of interviews of Mark Rock, October 8,
22 2009; transcript of interview of Mark Rock,
23 October -- September. Sorry. September 21st,
24 2010, transcript of interview of Vicky Rock,
25 September 21st, 2010.

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1 THE COURT: 124, 25 and 26?
 2 MR. LI: Correct.
 3 THE COURT: Ms. Polk?
 4 MS. POLK: Judge, no objection. Although,
 5 Exhibit 121, which has already been admitted, is
 6 the same thing as Exhibit 125.
 7 THE COURT: I'll admit all three. But watch
 8 for duplication.
 9 (Exhibits 124, 125 and 126 admitted.)
 10 MR. LI: And a couple of small things. I know
 11 an exhibit list, Your Honor, is not evidence. But
 12 there are certain -- there is some extra language
 13 in the exhibit list that we would move to strike.
 14 THE COURT: Okay. And what are you referring
 15 to?
 16 MR. LI: Exhibit 27 says, Cynthia Manner with
 17 cup 15 minutes after sweat lodge. There is no
 18 evidence of that.
 19 THE COURT: I'm not going to take the
 20 description as evidence. I'm going to stand on the
 21 evidence. So --
 22 MR. LI: I just wanted to point it out,
 23 Your Honor.
 24 THE COURT: I'm making a note of it right now
 25 for me.

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1 MR. LI: Also just for your notes, then,
 2 Your Honor, 28, 29, 31.
 3 THE COURT: Ms. Polk, any record on this?
 4 MS. POLK: Your Honor, those are the notes
 5 that were provided to the state by Cynthia Manner,
 6 who is the -- the photographs were taken with her
 7 camera. And when she provided the photographs, she
 8 is the one who provided those descriptions on them.
 9 THE COURT: And does it actually appear
 10 somewhere on the picture? I mean, is it dated on
 11 the back with the time or something like that?
 12 MS. POLK: Yes. It's on the back of each of
 13 the photographs.
 14 MR. LI: I think the Court -- if I'm --
 15 perhaps I'm misunderstanding. If the Court's
 16 question is is it, like, a stamp as in a regular --
 17 when you print a photograph and it shows the date
 18 and time of the stamp.
 19 THE COURT: Either one.
 20 MR. LI: This is just a sticker on the back
 21 that has been affixed, perhaps by the state, I
 22 assume by the state, that says this language.
 23 There is no foundation for it.
 24 THE COURT: Ms. Polk, you said this came from
 25 her notes?

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1 MS. POLK: Yes. The -- Cynthia Manner
 2 provided the photographs to the state, provided us
 3 with the reference number for each photograph and
 4 that description. So we simply -- that's all been
 5 disclosed to the defense. And then when we marked
 6 the exhibits, we included the reference number and
 7 the description from Cynthia Manner.
 8 MR. LI: We're not claiming a discovery
 9 violation. We're just saying it's an exhibit. It
 10 should just say photo.
 11 THE COURT: I'm going to note that and then
 12 note that evidence is weak as to the exact timing
 13 of the photographs just based on the note.
 14 Apparently there is some evidence of that. I'm
 15 only going to go on the -- I'm only going to look
 16 at that as part of the description. I'm not going
 17 to consider that as evidence.
 18 MR. LI: Thank you, Your Honor.
 19 Okay. With that the defense rests.
 20 THE COURT: Okay.
 21 There are two other motions that perhaps
 22 we can argue as well.
 23 Ms. Polk, anything else on the 404(b)?
 24 MS. POLK: No, Your Honor. Thank you.
 25 THE COURT: Thank you. I have a lot to look

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1 at. So this motion is under advisement.
 2 MS. DO: Your Honor, as we had spoken about
 3 earlier, the defense does intend to provide the
 4 Court with a supplement to the pleadings already on
 5 file with regard to the 404. We anticipate having
 6 that ready within a week's time.
 7 THE COURT: Okay. Yes. I've got, as I've
 8 indicated, a lot to look at. I'd like to have
 9 that -- order that be provided by November 26.
 10 MS. DO: All right, Your Honor.
 11 MR. LI: And, Your Honor, given the complexity
 12 of this and given the large volume of evidence that
 13 has been introduced in conjunction with the
 14 briefings and the paper filed by the state, we'd
 15 ask that there be some time set aside for argument,
 16 perhaps half a day, shortly after the brief is
 17 filed.
 18 THE COURT: You know -- and that's --
 19 Ms. Polk, would you want to have that as
 20 well --
 21 MS. POLK: Judge, if the Court would like
 22 argument. But I would leave it to the Court's
 23 discretion.
 24 THE COURT: Okay. We can schedule that. But
 25 rather than have that briefing due on the 26th, in

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1 light of the holiday I'm going to make that on the
2 30th. And then I'm going to ask the attorneys to
3 contact Diane, my JA, to arrange time for oral
4 argument and combine that with anything else that
5 might still be outstanding at that time.

6 MR. LI: Thank you, Your Honor.

7 THE COURT: Okay. So what do the parties want
8 to take up at this time?

9 MS. SEIFTER: Yes, Your Honor. If I may.
10 Miriam Seifter, for the record.

11 We do have motion in limine still
12 outstanding. One pertains to financially related
13 information. And the second is related to autopsy
14 photographs. And I would like to begin with the
15 financially related information.

16 But first I did want to thank the Court
17 for your prompt consideration of my pro hac vice
18 admission and also the state.

19 THE COURT: Okay.

20 MS. SEIFTER: Your Honor, the state has
21 indicated it seeks to admit at least three types of
22 information related to financial data or evidence
23 at trial. The first is evidence of the refund
24 policy of James Ray International. The second is
25 evidence of the sales practices through which

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1 Mr. Ray allegedly sold JRI seminars. And the third
2 is evidence of the cost of the Spiritual Warrior
3 retreat.

4 And I would like to take just a few
5 minutes to explain why all of this evidence is both
6 irrelevant and unduly prejudicial. And there is
7 one item on that I'd like to note. At one point
8 the state also indicated its intent to introduce
9 evidence of Mr. Ray's personal financial status.

10 In a more recent paper, their motion in limine
11 filed October 26, on page 5 the state indicated
12 that that evidence of the defendant's financial
13 status is not relevant. The defense agrees with
14 the latter position that it is not relevant.

15 But if there are anymore disputes,
16 everything I'm about to say pertains with equal
17 force to that information. So we can perhaps take
18 that up afterwards.

19 To begin with relevance, Your Honor, it
20 is rare, certainly not unheard of, but rare, that
21 financial information has probative value in a
22 criminal case. The cases in which it has come in
23 in which the state has cited in its papers tend to
24 fit a particular mold. They are cases involving
25 deliberate conduct by a defendant who is charged

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1 with a specific-intent crime, like fraud or theft.

2 The two cases the state has cited in its
3 response are United States versus Quattrone and
4 United States versus Logan. Both of those two
5 cases fit that mold. In Quattrone evidence of a
6 defendant's very substantial compensation was
7 deemed relevant to his motive to obstruct a
8 government investigation into his business
9 dealings.

10 And United States versus Logan, the
11 defendant was charged with inaccurately reporting
12 loan delinquencies, a deception that allowed him to
13 hang on to some \$700,000.

14 And, Your Honor, there is no parallel
15 here. As the Court is well aware, Mr. Ray is
16 charged with an unintentional crime. There is no
17 claim whatsoever that he intended to cause the
18 deaths at issue and certainly not that he had any
19 motive in doing so.

20 What the state must prove, as the Court
21 knows, is that Mr. Ray caused the deaths, that he
22 did so while consciously disregarding a substantial
23 and unjustifiable risk that the deaths would occur.
24 And we are just not aware of any case law in which
25 finances or a profit motive were deemed relevant in

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1 proving reckless manslaughter.

2 Of course, as the Court has mentioned in
3 previous hearings, there is not always a case on
4 all fours. So I would like to take the time to
5 just quickly go through the state's asserted
6 theories of relevance. And here I'm drawing from
7 the state's response to our motion at pages 3
8 through 5.

9 The state's first theory, it styles
10 motive and mental state. And I believe this
11 argument goes as follows. I certainly obviously do
12 not want to mischaracterize anything the state has
13 said. So if I misstate it, please -- we can
14 correct that afterwards. But the best of my
15 understanding, the chain of reasoning is that if
16 Mr. Ray used aggressive sales pitches, charged a
17 high price and wanted people to purchase admission
18 to his seminars, then it is more probable that he
19 wanted to set his seminars apart from others in
20 some way.

21 And if he wanted to set his seminars
22 apart, it is more probable that he wanted to
23 provide intense, physically challenging
24 experiences. And if he wanted to provide those
25 kinds of physically challenging experiences, it is

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1 somehow more probable that he decided to forgo
2 available precautions and safeguards at the 2009
3 sweat lodge ceremony, notwithstanding risks of
4 death, of which he was, in fact, aware.

5 And, Your Honor, respectfully, in that
6 logical chain, A does not lead to B, and B does not
7 lead to is C. The alleged fact of consequence, as
8 we understand it, which is whether Mr. Ray chose to
9 forego precautions at the 2009 ceremony, just does
10 not hinge on the evidence that I started that chain
11 with, which is whether Mr. Ray's sales techniques
12 were casual or were dogged and whether the seminars
13 were expensive or were free.

14 And I would add to that, Your Honor, if
15 what the state means is that Mr. Ray was the kind
16 of man who would make an aggressive sales pitch and
17 is therefore also the kind of man who would engage
18 in reckless conduct months later at a sweat lodge
19 ceremony, that, of course, is character evidence.
20 And the rules of evidence prohibit it.

21 The state's second theory, just quickly,
22 pertains to the decedents' state of mind. And the
23 argument there, as we understand it, is if the
24 three decedents paid a lot of money for the
25 Spiritual Warrior Weekend, it is more probable that

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1 they would have chosen not to leave the sweat lodge
2 despite physical distress, in the state's words, to
3 get their money's worth. And, Your Honor, we
4 submit that there is just no factual support for
5 that theory.

6 As an initial matter, the cost of the
7 Spiritual Warrior Retreat was for the entire five
8 days, not for the sweat lodge in particular. We
9 know that three participants who paid in full for
10 the weekend -- Elsa Hefstad, Simeon Marzvaan and
11 Soheyila Marzvaan -- opted out of the sweat lodge
12 altogether. And we have heard testimony over the
13 past week from Vicky Rock, who paid in full but
14 left the sweat lodge after the first round, and
15 also earlier today from Caren Wendt, who left
16 during the third round and stayed out the round 4.

17 Moreover, while we're talking about the
18 participants' state of mind, the only participants
19 whose state of mind might matter in this case are
20 the decedents. Of those three individuals, Liz
21 Neuman did not pay at all for the Spiritual Warrior
22 Weekend. She was attending for free. And there is
23 no evidence that James Shore or Kirby Brown
24 subscribed to the state's expense-motivated theory.

25 So even if the state could come up with

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1 some witness who says that they would have wanted
2 to get their money's worth, so to speak, there is
3 an important logical gap there that separates that
4 from a fact of consequence.

5 And the final point on this financial
6 information, Your Honor, that I'd like to make goes
7 to prejudice. And that is even if this information
8 had some probative value, and we argue that it does
9 not, that would be far outweighed by the prejudice
10 to Mr. Ray arising from the depiction of him as an
11 unscrupulous businessman and by association a bad
12 person.

13 As I believe the Court is aware from
14 previous discussion in this case, one of the
15 attacks on Mr. Ray's character has been to portray
16 him as an unsavory businessman driven by a desire
17 to get ahead financially. And there is a very real
18 possibility that courts would take this kind of --
19 I'm sorry -- juries would take this kind of
20 information, view Mr. Ray's business practices
21 perhaps with disfavor, and would therefore think
22 that he is a bad or contemptible person who is more
23 likely to have committed a bad act like the charged
24 crime.

25 And in addition, Your Honor, this would
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1 require another minitrial. The defense certainly
2 disputes the state's characterization of this
3 financially related information. And if the state
4 pursues this line of evidence, the defense will
5 need to meet it. And we'll need to come back
6 likely for more hearings in which to sort it all
7 out.

8 And we would just submit there is no need
9 to do that, to take the Court's time in that way
10 and to expose Mr. Ray to that sort of risk of
11 prejudice whereas here the evidence adds nothing to
12 the state's case.

13 We would ask the Court to grant our
14 motion and exclude our evidence.

15 THE COURT: Thank you, Ms. Seifter.

16 Ms. Polk.

17 MS. POLK: Thank you, Judge.

18 Judge, the rules of evidence make it
19 clear that all relevant evidence is admissible
20 unless it's specifically precluded by a rule or
21 statute. There is no rule or statute that
22 precludes evidence of the defendant's financial
23 motive nor evidence of what witnesses and what
24 participants paid to participate in the Spiritual
25 Warrior seminar. And, in fact, that information

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1 is -- it completes the story.

2 To suggest somehow that we try this case
3 in a vacuum without the jury knowing how much
4 participants paid, particularly because that goes
5 to the participants' frame of mind when they make a
6 decision to play full on, to use the defendant's
7 own terms, is simply not supported by the law.

8 Evidence that is relevant comes in unless
9 there is a statute or a rule that precludes it.

10 And there is no rule or statute that precludes
11 evidence about the defendant's motive, which is
12 clearly financial, nor about the victims' or the
13 participants' frame of mind.

14 I also suggest to the Court that ruling
15 at this time is premature without hearing from
16 participants and without hearing from the state's
17 experts. The state has noticed an expert on
18 large-group mentality. It's Rick Ross. And he
19 will testify specifically about how the amount of
20 money that a person pays for an event, particularly
21 in the Spiritual Warrior seminars, the fact that
22 participants had paid \$10,000, is one of the
23 reasons why they feel pressured to stay in these
24 events.

25 The evidence at trial will show that the
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1 defendant continually sought to increase
2 participation in the seminars through high-pressure
3 sales techniques and that he also believed that in
4 order to attract participants to his events, he
5 needed to, in his words, continue to push the
6 envelope by offering participants events that were
7 physically challenging.

8 And, in fact, we just heard through the
9 testimony on the 404(b) hearing from Caren Wendt
10 about how the physical and emotional challenge was
11 a factor that's always present in all of the
12 defendant's events.

13 In order to push the envelope, the
14 defendant developed activities with high risks of
15 injury and/or physical distress. And what the jury
16 will hear at trial is that he failed to provide for
17 safeguards both to minimize the possibility of
18 risks and to address injuries as they were
19 occurring.

20 When injuries did occur in the prior
21 sweat lodge events, the defendant minimized the
22 danger, failed to acknowledge responsibility, did
23 not tell future participants about problems in his
24 prior events; and he took steps to minimize both
25 the public and future participants' knowledge of

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1 the events in order to continue to attract
2 participants.

3 The financial evidence will support the
4 defendant's motive to downplay the risk involved in
5 his activities and to continue to conduct the
6 activities without regard to the substantial
7 dangers that the activities, particularly his
8 manner of conducting a sweat lodge ceremony, posed
9 to participants.

10 The state is also offering the financial
11 information because it's relevant to the frame of
12 mind of the participants and in particular of the
13 three victims of the manslaughter charges.

14 It explains their reluctance to leave the
15 ceremony because they have paid that money and the
16 emphasis has been to play full on and, of course, a
17 personal desire from someone who has paid 10,000 to
18 participate in an event, to make sure they get
19 their money's worth.

20 The state will present evidence at trial
21 to support the conclusion that the large investment
22 by the victims -- and that's approximately nine to
23 \$10,000 -- compelled them to participate fully in
24 all of the events including the sweat lodge and
25 that that particular event was unique and extreme.

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1 Over and over the state has heard
2 comments relating to the defendant's description of
3 the sweat lodge as hotter and more extreme than any
4 other that participants have ever experienced.

5 Most of the participants expected they
6 would be pushed physically and that this physical
7 struggle was necessary to ultimately receive the
8 full benefit of their financial investment in the
9 Spiritual Warrior Seminar. In other words, they
10 believe they needed to participate fully in order
11 to get their money's worth.

12 So the financial information, the cost of
13 the seminars, the high-pressure techniques and the
14 defendant's refusal to give refunds to participants
15 is relevant. In fact, what the jury will hear at
16 trial from participants is that they did not know
17 they would be participating in a sweat lodge
18 ceremony before they signed up for the Spiritual
19 Warrior event -- and the Court heard that from
20 witnesses today -- and that those who changed their
21 mind were not ever given a refund. Refund was not
22 an option. And they don't learn about the sweat
23 lodge ceremony until they've already paid that
24 money. And there is no option to get their money
25 back.

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1 This evidence is not particularly
2 prejudicial, Your Honor. It completes the story.
3 It tells the jury what happened. To suggest that
4 we take out the fact that these participants paid
5 to be at the Spiritual Warrior Seminar, paid to be
6 at a seminar that included a sweat lodge ceremony,
7 is requiring the state to try the case in a vacuum
8 and is keeping away from the jury vital
9 information. And there is no good reason to do it.

10 These are the facts. This trial should
11 be a search for the truth, a search to determine
12 what happened out there. And to arbitrarily keep
13 out a piece of the events, to arbitrarily keep out
14 the fact that participants paid for the seminar,
15 makes no sense. And it's not supported by any rule
16 or by any statute, nor has the defendant cited any
17 rule or statute to justify keeping that information
18 from the jury.

19 To the extent necessary, a limiting
20 structure can be provided to the jury if for some
21 reason the defense believes that the information is
22 prejudicial. But this is simply information about
23 the defendant's events, the fact that he charges
24 participants for it. And it goes to their state of
25 mind as well as the defendant's state of mind, his

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1 motive to make his event more extreme, on the one
2 hand, and victims' motive, on the other hand, to
3 play full on, to get their money's worth and to
4 stay in the sweat lodge ceremony itself.

5 So to the extent this information is
6 prejudicial, which I, frankly, fail to see -- but
7 to the extent it is prejudicial, a limiting
8 instruction can be given to the jury that limits
9 what factors they weigh that information in on.

10 Finally, Your Honor, again, I believe
11 that to preclude the state ahead of time at this
12 point in time from discussing with the jury the
13 amount that participants paid, the high-pressure
14 sales practices used by the defendant and the fact
15 that participants cannot get a refund would be
16 arbitrary and would be premature without hearing
17 from witnesses how this information was relevant to
18 their conduct at the Spiritual Warrior seminar.

19 There is no rule that supports its
20 preclusion. There is no statute that supports the
21 preclusion. It completes the story. It is part
22 and parcel of what happened out there in October of
23 2009. And it is not prejudicial.

24 And the state urges the Court to deny
25 this motion.

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1 THE COURT: Thank you.

2 Ms. Seifter, did you want to reply? I
3 would like you to comment also on the suggestion by
4 Ms. Polk that the Court needs to hear what the
5 expert has to say before I can rule.

6 MS. SEIFTER: Thank you, Your Honor.

7 With respect to that most recent
8 question, the state has elected not to put on
9 evidence at this hearing, so it's a little bit hard
10 for us to know what we're up against.

11 In terms of a particular expert, my
12 understanding is that that's along with the kind of
13 evidence we would like to be keeping out. And our
14 arguments as to that evidence would be the same as
15 they are as to this evidence, that they are far
16 more prejudicial than probative.

17 Just a couple of other points. In terms
18 of the rules of evidence that apply here, obviously
19 we do cite them in our papers. And the most
20 important rules are Rule 403 and Rule 404(a), which
21 the Court is very familiar with.

22 And, I mean, throughout the papers and
23 our argument today, our position is that this
24 evidence has very, very little probative value and
25 is extremely prejudicial. And that is exactly what

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1 those rules address, of course.

2 As to the state's assertion regarding
3 financial motive, I apologize, but I'm still having
4 a hard time following the logic. It seems the
5 heart of the state's theory has to do with the
6 taking or not taking of safeguards at the 2009
7 Spiritual Warrior sweat lodge. And the notion that
8 the state connects that to is whether the
9 theories -- I'm sorry -- whether the seminars were
10 physically and emotionally challenging, as was
11 discussed earlier today.

12 But that issue is not made more or less
13 probable by the information that we're addressing
14 in our motion, which is a refund policy, sales
15 tactics and potentially personal wealth and the
16 cost of the seminar.

17 It seems one could want to put on a very
18 challenging event and have nonaggressive sales
19 tactics or aggressive sales tactics; make it for
20 free, charge a high price, give refunds or not.
21 There just -- there is no nexus there. And there
22 is certainly not the required nexus between the
23 fact and the inference that the state would like to
24 draw.

25 And, in addition, the argument seems to
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1 us internally inconsistent. We just heard the
2 state say Mr. Ray plays up the risks of his
3 programs very aggressively and also that he
4 downplays the risk very aggressively. So I'm not
5 sure exactly where that leaves the argument.

6 In terms of the refund issue, again this
7 is another matter on which we would need to -- you
8 know -- put on and examine evidence. We are not
9 aware of any refunds that were requested. So
10 certainly there would need to be examination of
11 that before that could be the basis for relevance.

12 And I think unless the Court has further
13 questions, those are points we wanted to address.

14 THE COURT: Thank you.

15 The motion is under advisement.

16 There was mention of a photograph, a
17 motion in limine also.

18 MS. SEIFTER: Thank you, Your Honor.

19 We believe that the motion to exclude the
20 autopsy photographs has been well briefed. So we
21 just have a few points to highlight. Judge, it's
22 certainly well established in Arizona case law that
23 autopsy photographs require a very careful analysis
24 under Rule 403. And the rational, of course, is,
25 as the Court said, in State versus Chappell, is

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1 that such photographs have a natural tendency to
2 inflame jurors' emotions and incite their passions.
3 As a result of that tendency, autopsy
4 photographs have to have more than merely technical
5 relevance. And the rule from Chappell is that,
6 generally speaking, inflammatory photographs must
7 at least illustrate a disputed fact for their
8 probative value to outweigh the obvious prejudicial
9 effect.

10 The autopsy photographs here do not meet
11 the requirement. The state has identified two
12 purposes for which the photographs might be
13 relevant. And neither involves a disputed fact
14 that the photographs actually illustrate.

15 First, the state says that the
16 photographs might help the Court in identifying the
17 victims.

18 With all due respect, Your Honor, we
19 think it is very clear that that argument is
20 unveiling. There is no dispute over the victims'
21 identities. To the extent the photo would have
22 some technical relevance to identity, it would be
23 purely cumulative. And, if necessary, the state
24 would certainly stipulate to the identity of the
25 victims.

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1 The state's papers also say in passing,
2 second, that the autopsy photographs may be
3 necessary to understanding the doctors' testimony.
4 But, Your Honor, the doctors themselves say
5 otherwise. The state's theory, as the Court knows,
6 is that the decedents died of heat stroke. The
7 defense has interviewed the medical examiners,
8 Drs. Mosley and Lyon, in the presence of the
9 prosecution. And each doctor stated clearly that
10 there are no autopsy findings associated with heat
11 stroke. This is an undisputed fact at this point.

12 In other words, in a heat-stroke case,
13 unlike a gunshot case or a stabbing case, there is
14 just nothing that you can see in the autopsy
15 photographs that would be revealing of heat stroke.

16 I do want to be clear, Your Honor. We
17 are not taking the position that defendants can
18 somehow keep photos out of evidence by choosing not
19 to contest elements of the crime that the state has
20 to prove. The state correctly notes in its
21 response that the prosecution, of course, always
22 has the burden of proving each element beyond a
23 reasonable doubt.

24 But the upshot of that is that a highly
25 probative photo may need to come in in some cases

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1 despite it's prejudicial effect. And, indeed, all
2 of the cases the state relies on involve exactly
3 that, highly probative photos.

4 To take a few examples, State versus
5 Steward, State versus Amaya-Ruiz, State versus
6 Salazar, State versus Gerlaugh. These are all
7 cases that involved crime-scene photos that helped
8 illustrate causes of death, that had physical
9 manifestations and in addition to that, how and
10 where the crime was committed.

11 This is a totally different situation.
12 Nothing in these autopsy photographs, which are not
13 crime-scene photos, is going to help any of -- help
14 the state prove any of the elements of reckless
15 manslaughter nor is there anything in the photos
16 that we can see or anyone can see that illustrate
17 the alleged cause of death. They simply do not
18 show anything and do not add to the state's case,
19 and we would argue that are just far outweighed by
20 the obvious prejudicial effect that such photos
21 have.

22 THE COURT: Thank you.

23 Ms. Polk.

24 MS. POLK: Thank you, Judge.

25 Just briefly. The state has also fully

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1 briefed this matter. And I would request that the
2 Court -- I would rely on the state's pleading, the
3 state's response, in this regard. I just want to
4 make a couple of points, which is the medical --
5 none of the medical examiners have said that the
6 autopsy photographs would not assist them in
7 testifying.

8 What they have said is that there are no
9 autopsy findings associated with heat stroke. But
10 then they've gone on to explain that it's the
11 absence of injury to a body that helps them
12 determine the cause of death. And with heat stroke
13 that would be one of the uses of the autopsy
14 photographs would be to show the absence of injury
15 or the absence of other explanation for death,
16 which allows them to conclude that heat stroke, for
17 example, and not a gunshot wound, is the cause of
18 death.

19 So the medical examiners would testify
20 that the autopsy findings -- that there are no
21 autopsy findings, but they absolutely would not
22 testify that the photographs themselves will not
23 assist them. In fact, they will find the
24 photographs of value in their testimony. They've
25 so indicated.

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1 And the state would intend to use very
2 limited photographs of the autopsies only to the
3 extent necessary to assist the medical examiners in
4 testifying, which is allowed clearly under Arizona
5 state law. And I won't cite the cases in court,
6 but they are cited fully in the state's brief.

7 At this point we have not identified
8 which autopsy photographs that we intend to use. I
9 acknowledge and would request a hearing outside of
10 the presence of the jury where the limited
11 photographs that would be needed to assist the
12 medical examiners in testifying would be identified
13 for court and counsel at that time, and further
14 argument could be made at that time.

15 Finally, Your Honor, the defense has
16 noticed a medical examiner from New Mexico as their
17 expert witness. They have indicated that he is not
18 ready for the state to interview. They certainly
19 have agreed to make him available to the state for
20 an interview when he is ready.

21 But without knowing what the medical
22 examiner from New Mexico has to testify about, the
23 state is not in a position to say that the autopsy
24 photographs would not assist the state in
25 cross-examining that witness.

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1 So I would just leave the Court -- with
2 the Court that we have fully briefed this position
3 in our response. And when it is appropriate after
4 we've had a chance to interview the defense's
5 medical examiner expert, that at that time we would
6 identify for the Court and counsel the limited
7 photographs that we wish to use and explain at that
8 time through the -- with the assistance of the
9 medical examiners why those photographs are
10 necessary.

11 Thank you, Judge.

12 THE COURT: Thank you, Ms. Polk.

13 Ms. Seifter, did you have any reply?

14 MS. SEIFTER: Just a few short sentences,
15 Your Honor.

16 THE COURT: Sure.

17 MS. SEIFTER: With respect to Ms. Polk's point
18 that somehow the testimony of the defense witness
19 is going to affect the need for these photographs,
20 our motion in limine is to exclude the photographs
21 from the state's case in chief. That's what we are
22 arguing about today. If somehow the defense opens
23 the door to these photographs, that would be an
24 entirely separate issue.

25 In terms of the assisting of the medical
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1 examiners and explaining their testimony, we do
2 take some issue with that, Your Honor. As an
3 initial matter, we believe there is no argument in
4 this case that there was a gunshot fired or that
5 there was any physical trauma or other cause of
6 death that the state has alluded to might be useful
7 in explaining the testimony.

8 And I do have here the discussion that
9 was had with the medical examiners. Question was
10 from Ms. Do: If I understand correctly, there
11 aren't any positive autopsy findings that are
12 specific for heat stroke; is that right?

13 Dr. Lyon said, correct.

14 So they're kind of meaningless -- the
15 photographs -- in terms of understanding the cause?

16 Answer: No. They're helpful.

17 Question: In what way?

18 Answer: They're negative photos. I
19 mean, they don't show any injury.

20 Question: Okay. They don't show injury.
21 And other than that, though, there aren't any
22 specific findings that I would see in those photos?

23 Answer: That would confirm heat stroke.

24 Correct.

25 So -- you know -- to the extent that the
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1 state is saying the only possible use for these
2 photos is to show the absence of a physical injury,
3 we would simply argue there is no allegation that
4 there was a physical injury. And, therefore, any
5 probative value is very minimal.

6 THE COURT: Thank you.

7 I'm going to hold ruling on this question
8 in abeyance. I really need to see any proposed
9 photographs and then how that would relate to
10 specific testimony of the medical examiners, the
11 experts, so that I can make a proper 403
12 determination. So I really need to get to that
13 point.

14 So I do have the law now. Thank you.
15 It's been provided in the briefs and the argument.
16 And we'll just have to see what photos might be
17 tendered, what the support might be.

18 There are some other issues that have
19 been framed as well. Ms. Polk filed a motion in
20 limine re pretrial issues. The defense has
21 responded. And three of the five are apparently
22 not contested. Two there may be still be some
23 issues on.

24 Did the parties want to take that up this
25 afternoon?

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1 MR. LI: Could we table that, Your Honor, for
2 the next hearing? I think perhaps what we can do
3 is make the argument on the 404(b) hearing, make
4 the argument on the state's motion in limine. And
5 then also I think we should probably by then be
6 able to supply the Court an affidavit relating to
7 the fees and sanctions issue and maybe bring that
8 up at that same hearing.

9 THE COURT: Ms. Polk, then, do you agree to
10 wait on discussion of the two issues? And the
11 response was just filed on the 9th.

12 MS. POLK: Judge, I don't think the state's
13 time has run to file a response.

14 THE COURT: It has not.

15 MS. POLK: Yes. Thank you, Judge.

16 THE COURT: We will wait on those questions.

17 Anything else you would like to take up
18 this afternoon?

19 Mr. Kelly.

20 MR. KELLY: Judge, I have a couple more
21 procedural matters. First of all, to confirm the
22 trial date as outlined, I believe, on February 16,
23 2011.

24 THE COURT: I believe so. It's in a minute
25 entry.

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1 MR. KELLY: The second thing Mr. Li and I
2 discussed was the wisdom of scheduling perhaps two
3 more days of your time. We know how busy you are.
4 Two or three days in the future. Our suggestion
5 would be sometime during the first week of February
6 prior to trial to resolve the remaining pretrial
7 issues with a briefing schedule prior to those
8 dates so that both sides can file remaining motions
9 in limine and responses and replies.

10 I'm not sure, Judge, what your schedule
11 is like. It was a thought we had.

12 THE COURT: We'll find more time closer. I'm
13 trying to think. We don't have an actual --
14 originally there were motion deadlines. And I
15 would need to be reminded.

16 Was there another deadline set after that
17 at all?

18 MR. KELLY: Judge, I'm willing to stand
19 corrected, but we don't believe there is. And
20 perhaps that's what we're looking for is a little
21 guidance in terms of organization as to when we
22 should be filing motions -- both sides -- with
23 adequate time for response and reply and
24 evidentiary hearing and oral argument necessary.

25 THE COURT: I have some recollection from when

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1 there was a discussion about the need to continue
2 this trial because I was going to participate in
3 another case. And I believe I was encouraging
4 people at that time to come up with a briefing
5 schedule. I think that was discussed.

6 Usually in these kinds of cases where
7 there is more work to do, I try to suggest that the
8 parties not do that because I really do want to
9 encourage communication. I just want to make sure
10 that everything is heard sufficiently in advance of
11 trial so we don't have a major legal question out
12 there when jury selection starts.

13 MR. KELLY: And I'm sure, Judge, we can go
14 with the state and suggest a briefing schedule.
15 But I guess the question is whether you will have
16 time for additional evidentiary hearings.

17 THE COURT: There will be time if it's needed,
18 two or three days in February. Just have to happen
19 if that's what's called for.

20 Ms. Polk, your thoughts on briefing
21 schedule, on whether you think there will actually
22 be a need for another two or three days of
23 hearings.

24 MS. POLK: Judge, I do believe we need time to
25 look at photographs. The Court has already noted

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1 that. At this time I'm unaware of any other
2 issues. Although, again, the state has not had the
3 opportunity to interview the defense witness.

4 Judge, when the state becomes aware of
5 issues, we will bring them to the Court's attention
6 as quickly as possible. I'm just not aware of
7 anything at this point.

8 THE COURT: Okay. Thank you.

9 Diane, who is here -- my judicial
10 assistant -- has noted that I did order setting a
11 motion deadline Tuesday, January 18, 2011. So
12 that's all that was covered at that time. And the
13 minute entry with the first day of trial,
14 February 16, and the last day here of June 10.

15 Since Diane is here, I think just to be
16 safe we will find some time in February and set
17 aside -- early in February.

18 MR. KELLY: I'm certain, Judge, there is going
19 to be additional motion practice by the defense.
20 As an example, contesting the opinion evidence of
21 the proffered purported expert, as an example, but
22 some other motions as well.

23 The second issue I have, Judge, is --
24 relates to a request for discovery. Throughout the
25 course of this evidentiary hearing we heard from

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1 some Angel Valley owners and employees that there
2 were other sweat lodge activities conducted by
3 nonparties.

4 And we're not -- obviously not saying the
5 State of Arizona has this information within its
6 grasp. But given the pretrial argument relating to
7 subpoenas issued by the defense, Judge, I would ask
8 permission today to prepare subpoena duces tecum to
9 Angel Valley to identify the dates and the
10 organizations of the other sweat lodge -- nonJames
11 Ray International sweat lodges conducted at Angel
12 Valley between the years 2003 through 2009.

13 Obviously when we receive that
14 information, we will disclose it to the state. I
15 do not know whether any of that information would
16 be relevant today. But I do know that the state a
17 moment ago in its argument was making comparison to
18 other sweat lodges. We've heard testimony from
19 witnesses indicating comparison to other sweat
20 lodge events. And I believe that we're entitled to
21 discover information to determine whether those are
22 accurate statements or not.

23 THE COURT: So, essentially, Mr. Kelly, you're
24 making an oral motion right now under 15.1(g)?

25 MR. KELLY: That's correct, Judge. And to

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1 authorize issuance of the subpoena.

2 Secondly, Judge, in regards to
3 subpoenas -- and, again, I make these motions,
4 given the trial date, without conceding or waiving
5 any argument regarding admissibility under 404(b)
6 or the admissibility of the proposed financial
7 information. But, Judge, given the short time, I'm
8 somewhat concerned.

9 And I would also ask for permission to
10 issue a subpoena to the victims to determine their
11 gross income and net worth. Because should that
12 information that the state -- I listened to
13 Ms. Polk's argument -- be admissible in this case,
14 I would submit that the victims' financial worth
15 relates to this purported financial issue.

16 In other words, if somebody makes
17 \$100,000 a year and pays \$10,000 to attend, that's
18 much different than a person who makes \$10 million
19 a year and pays \$10,000. And, again, I make this
20 request without any concession in regards to the
21 defense responses as they relate to 404(b) and the
22 financial issue.

23 THE COURT: And, Ms. Polk, rather than
24 respond, I want to have motions in writing so
25 people have an opportunity to respond rather than

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1 just on the spur of the moment. But time is
2 relatively short before trial. And so I think it's
3 important to, I've said it before, to communicate
4 about this.

5 Just looking at the date, the June 18 is
6 not going to work for a deadline for motions to
7 have time to set two or three days for hearing.
8 It's just not. It's going to have to be moved up
9 from that to make sure everything is joined and we
10 can hear it.

11 So, Mr. Kelly, I'm not ignoring the
12 motions you just brought. I'm just saying I
13 would -- I don't know that there is any kind of
14 discovery dispute or there needs to be a motion at
15 this time. I'd just -- I'd like you to talk to the
16 state, Ms. Polk, about getting the records about
17 other sweat lodges that were conducted at Angel
18 Valley and see if that is agreed.

19 I don't know.

20 Ms. Polk, are you prepared to comment on
21 that right now on that part?

22 MS. POLK: Your Honor, I believe the state can
23 make that inquiry. My only -- I just have a couple
24 comments. One is I'm not aware of what authority
25 the defense would have to subpoena any records at

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1 all. And if this motion is brought under
2 Rule 15.1(g), then first they have to show that
3 they've been unable to get this information. They
4 have not interviewed the Hamiltons or the Mercers
5 to find out this information. They haven't
6 requested it of the state.

7 I can talk to Mr. Kelly and find out what
8 information he wants. But this is the first that
9 I'm hearing about it here in the courtroom.

10 THE COURT: And that's why I didn't want to
11 have this all decided today if it's not something
12 to just be agreed upon. In terms of the mechanism,
13 I suppose it can be a court order I can sign and it
14 can be presented to them, or it can be a subpoena.

15 Once the Court decides that it's
16 discoverable under 15.1(g), if I decide that, I'm
17 not so concerned about the mechanism. But there is
18 a substantial need test and whether or not it can
19 be obtained.

20 Mr. Kelly.

21 MR. KELLY: Judge, very briefly in reply, the
22 relevance is should one of these other nonJames Ray
23 sweat lodges actually be hotter than the 2008, 2009
24 sweat lodge, that speaks to the credibility of the
25 witnesses. That's the relevance.

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1 In regards to conferring with the state,
2 I don't read 15.1(g) as requiring that. The first
3 we knew of the need in regards to preparation of
4 our case for this material was during this
5 evidentiary hearing. And, thus, that's why the
6 request is made today.

7 And, again, Judge, just as an example, if
8 there were -- and I'm making this number up -- 50
9 other such sweat lodge events at Angel Valley
10 during the relevant time period, then we need to
11 retain an investigator, interview people who
12 attended those, to make this comparison whether or
13 not these witnesses were testifying truthfully.
14 And that takes time.

15 And if we're going to be required to file
16 a motion, a response, a reply, it's going to be
17 Christmas by the time we get that information
18 together. Your January 18 motion filing deadline
19 is fast approaching.

20 I was simply asking for permission to
21 submit a subpoena duces tecum.

22 I'm guessing, Judge, but I would not
23 being surprised if Angel Valley's attorneys
24 objected and we would be in front of you to obtain
25 that.

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1 THE COURT: This is a different question than
2 the one that arose with regard to medical issues,
3 medical questions, that implicated federal law and
4 a number of things.

5 And I don't see that present in this
6 situation, Ms. Polk.

7 But we have motions that have been
8 briefed, and we're not deciding those today. And
9 here's one that's coming up right now. And I want
10 people to have an opportunity to address this
11 fully.

12 But there is a time issue too. And there
13 cannot be full motion response times in some of
14 these issues. If we have to have telephonic oral
15 arguments and that kind of thing on an expedited
16 basis, we'll do that so we can preserve this trial
17 date.

18 But, Ms. Polk.

19 MS. POLK: Judge, again, under Rule 15.1(g)
20 they have to show that they cannot get it through
21 other means. This is the first the state is
22 hearing about it. It's not true that the defense
23 only learned today that there have been other sweat
24 lodge ceremonies. In the interviews of David
25 Singing Bear, both Debby and Ted Mercer, the

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1 Hamiltons, they all talked about other sweat lodge
2 ceremonies having been performed at Angel Valley.
3 That information has been given to the defense from
4 very early on in this case. It's not new
5 information to them.

6 They haven't interviewed these people to
7 find out more about it. And so to suggest suddenly
8 in court that they need a tool, a subpoena, that
9 comes from the defense and goes out to these people
10 and hits them cold, it's a very aggressive way to
11 get information. And they haven't shown that they
12 can't get it through other means, which is what
13 Rule 15.1(g) requires.

14 MR. LI: Your Honor, if I may address one of
15 the points Ms. Polk made?

16 MS. POLK: Your Honor.

17 MR. LI: I apologize. I didn't realize you
18 weren't finished.

19 THE COURT: Ms. Polk.

20 MS. POLK: I just in general object to
21 multiple attorneys jumping in on the same issue.
22 It seems that fairness would suggest that -- I know
23 that there is four attorneys at that table. But if
24 they have an issue, that the assigned attorney
25 address that issue instead of all four of them

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1 getting a turn to weigh in on an issue that's in
2 front of the Court.

3 THE COURT: Have you finished your substantive
4 argument yet? Although I didn't really want to
5 have argument. I wasn't prepared to handle this
6 right now.

7 But, Ms. Polk.

8 MS. POLK: Judge, I agree with that as well.
9 This issue was never brought up with the state.
10 The witnesses are available. We can attempt to get
11 information about prior sweat lodge ceremonies from
12 the Hamiltons. I don't believe it's even right for
13 the Court to suddenly be looking at whether or not
14 from the bench you're going to allow the defense to
15 issue a subpoena duces tecum or a court order under
16 Rule 15.1(g). I'm not sure why Mr. Kelly didn't
17 bring this up with the state instead of bringing it
18 up as an incidental matter at the end of the day.

19 THE COURT: About having multiple attorneys,
20 of course, the rule of witnesses, everybody
21 understands that. And I've had situations where
22 there are multiple attorneys on both sides and been
23 in those kinds of cases. And I never had it get to
24 the issue -- I ask that people be careful about
25 that.

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1 I don't know, Ms. Polk, if you're going
2 to anticipate having someone as a second chair
3 perhaps at some of the hearings at the trial. I
4 don't know.

5 But I agree with Ms. Polk as a general
6 proposition. But I don't like to stick to that
7 rigorously. Sometimes if there is just a point
8 that somebody wants to make. But I think the
9 general rule is it should be one person arguing.
10 But this isn't really an argument.

11 Mr. Kelly.

12 MR. KELLY: First of all, to clarify the
13 record, simply an exaggeration. There has been one
14 occasion during this evidentiary hearing where four
15 attorneys stood up and argued different points on
16 the same issue.

17 We were very careful to identify the
18 attorney by the chair in which he or she sat in and
19 by the motions, by making the motion, response or
20 reply. And the exception to that, Judge, is at the
21 inception both Mr. Li and I discussed scheduling
22 issues about the scope of the 404(b) issue. If
23 that was somewhat out of line, we would apologize.

24 In regards to -- my request really -- we
25 have the right to discover information, Judge. And

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1 we tried this methodology once earlier during the
2 pendency of this matter, issuing subpoenas to
3 obtain information not under the control of the
4 state and was objected. Every time we try to
5 confer, we get this type of a response.

6 The State of Arizona -- I heard Ms. Polk
7 stand up here and say the focus is to seek justice.
8 I agree. Why would she stand up and object to us
9 requesting information from Angel Valley? I would
10 submit that justice would require that that
11 information be provided to assess the credibility
12 of these witnesses.

13 And, again, Judge, I am not attempting to
14 make a motion. I'm attempting -- it's a request to
15 the Court. But it was not to be in the form of a
16 motion. Given the essence of time, that's why we
17 brought it up today. And I thought that was one of
18 the purposes of this three days taken out of the
19 Court's time.

20 And, again, Judge, I can send a letter --
21 certified letter to Angel Valley. I can obtain
22 their refusal of that information. Then I can come
23 back to court and get the court order under
24 Rule 15.

25 And my concern is just adequate time to
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1 obtain that information, evaluate, of course,
2 disclose it to the state and, if necessary, file a
3 motion by January 18.

4 THE COURT: Well, given what I've heard here,
5 the information is discoverable. I can make that
6 determination right now. Relevance isn't the test
7 at the discovery stage, even in a criminal matter.

8 But the use of a subpoena duces tecum is
9 not favored in the discovery process. So it
10 normally would go through a letter type proceeding.

11 But, Mr. Kelly, I don't intend to wait
12 for some motion deadline and have all these things.
13 And I know you don't want to either. I don't think
14 either side wants to wait.

15 It's pretty clear I'm going to have to
16 come up with a date sooner than the one I
17 contemplated to even decide the -- make a ruling on
18 the 404(b). Because I set, essentially, the
19 responsive argument in writing, if you will, to the
20 in response to the offer of proof, as Ms. Polk
21 called it. That's not until the 30th. I certainly
22 wanted to decide discover issues sooner than that.

23 So at this point I'm just going to direct
24 that the parties consult about discovery issues.

25 That's really what's contemplated. I want the

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1 parties to confer about that. And then if there
2 are issues, I want to see a motion. And I'm going
3 to set expedited hearings on them or oral argument.
4 I'm going to conduct it that way. But we're going
5 to do everything we can to preserve that February
6 date.

7 But I've already indicated I think this
8 is discoverable information. I don't want undue
9 delay in figuring out the correct mechanism. I
10 don't want to have that govern the timing of
11 getting this information. But I don't think it's
12 appropriate to go right to subpoena without
13 requesting the information.

14 MR. KELLY: Judge, am I authorized, then, to
15 in my letterhead request information from Angel
16 Valley?

17 THE COURT: Ms. Polk, I think people are
18 entitled to do that. I can't see why not.

19 MS. POLK: Judge, I've just indicated that if
20 they would give us a request of what they want, I
21 can either attempt to get it or let them know that
22 it's not within my power my ability to get it.

23 I don't know why the request can't be
24 made of the state, and then we can let them know we
25 can either get it or we can let them know we can't

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1 get it.

2 THE COURT: You're saying that you have
3 control over the Hamiltons?

4 MS. POLK: I don't have control over them.
5 But if Mr. Kelly will indicate in writing for me
6 what he wants, I can pass it on to them. And,
7 again, the Hamiltons haven't even been interviewed
8 by the defense. So these questions could be asked
9 directly of them through the interview process,
10 which is typically part of the discovery process.

11 THE COURT: I'll just say I don't want to make
12 arguments for either side. But I can certainly see
13 why someone might want to have information prior to
14 an interview as well perhaps.

15 Well, Ms. Polk, you have notice. The
16 defense wants this information. If you think you
17 can facilitate that, you know their intention. But
18 unless you know of some legal reason that I don't
19 why the defense can't request this information from
20 them, I think they can do it. If you can provide
21 it more quickly, I would appreciate that just in
22 the interest of case management. The sooner the
23 better.

24 MS. POLK: Your Honor, talking about
25 information from the Hamiltons?

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1 THE COURT: That's what you're talking about,
2 finding out about other sweat lodge ceremonies at
3 Angel Valley.

4 Ms. Polk, I have some things I wanted to
5 bring up, but I wanted to hear from the parties
6 first. Did you have anything else you wanted to
7 address this afternoon?

8 MS. POLK: No, Your Honor. Thank you.

9 THE COURT: Okay. I asked that Diane just
10 provide just a very initial draft of a juror
11 questionnaire I wanted people to start looking at.
12 That's something to get started with. I think it's
13 something that should be done, again, sooner rather
14 than later because I want to get an admonition in
15 place as far advance of the trial as possible.

16 So I'm going to ask that you look at that
17 and that that be taken up at one of our hearings
18 that I'm contemplating, telephonic oral arguments.

19 I just want to ask right now. Are you
20 going to be waiving Mr. Ray's appearance, do you
21 anticipate, for telephonic arguments on motions,
22 Mr. Li?

23 MR. LI: Yes, Your Honor, we will.

24 THE COURT: Okay. I'll address that for each
25 motion.

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1 I just want to say I want to be ready to
2 move ahead and decide these things when they come
3 up.

4 The juror questionnaires -- the other
5 thing I wanted to bring up is the issue that I
6 asked for argument on. The parties had briefed it
7 comprehensively. But I asked for oral argument.
8 That had to do with obtaining notes of interviews
9 with experts. I'm going to phrase it in that
10 fashion.

11 And I had spent some time writing a
12 ruling and tried to reconcile the disclosure rules.
13 And it's difficult. And I said this during the
14 telephonic argument. There really are valid
15 competing interests here.

16 My conclusion is that in dealing with
17 experts -- and I still choose to write something
18 out on it, and I will do that. But in working with
19 experts I don't think either side wants to be in a
20 situation where in those initial discussions with
21 expert witnesses, it's at a point where what the
22 expert is saying constitutes a discoverable
23 statement. I just don't think that the disclosure
24 rules contemplate that.

25 And the issue is really confined. No one

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1 was suggesting that -- the defense had not
2 suggested that this applies to other, if we call
3 them fact witnesses or lay witnesses. And I don't
4 know.

5 Mr. Li, whoever wants to address that.
6 Ms. Do has done that.

7 It's really confined just to the expert
8 witness at this time, isn't it?

9 MS. DO: Yes. And I would argue that it's
10 confined to an even more limited issue here, Your
11 Honor. It was never the defense position that any
12 notes that contained the initial statements during
13 consultation with an expert is discoverable.

14 I think it's important to remember the
15 context in which we received notice that the state
16 was going to call this witness, Rick Ross. Rick
17 Ross was going to actually testify, I think, within
18 17 days.

19 THE COURT: Right. But I was writing the
20 ruling. I dealt with the fact there appeared to be
21 a major change in circumstances from when that
22 first came about and then when we got around to
23 arguing it. So I do understand that distinction.

24 So right now are you still seeking
25 something?

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1 MS. DO: We are, Your Honor. And what I was
2 trying to get at is that it's an even more limited
3 issue. We have an expert here for whom we have no
4 idea what his testimony or his statement is going
5 to be other than a five-word sentence that he's
6 going to testify to group behavior.

7 And as the Court had just indicated a
8 moment ago, it's inherently unfair to allow the
9 state -- let me restate that. It's inherently
10 unfair to expect the defense to be able to go in
11 and conduct a meaningful interview of any witness,
12 and in particular an expert witness, without any
13 idea of what he has said previously regarding the
14 proper testimony. I mean, essentially, the party
15 would be stumbling in the dark.

16 And that's what we're asking for. The
17 state can circumvent this issue by having this
18 expert, I think according to standard protocol,
19 write a report or provide his notes. And they've
20 indicated they don't want that done. So we're
21 asking for some discovery so we can conduct a
22 meaningful interview.

23 THE COURT: I'm glad I brought this up because
24 you really answered something I wasn't completely
25 clear on before.

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1 Ms. Polk, you indicated you were
2 concerned about chilling of the state's
3 investigation and talking to witnesses if you're
4 going to have to turn over notes. You mentioned
5 that that was a concern of yours.

6 And we're only talking about experts. I
7 don't think those notes in consultation -- notes
8 that are made of consultations have to be turned
9 over, I don't think, if that's the case. But as
10 Ms. Do points out, we're now within three months of
11 trial. And the defense certainly needs to have a
12 comprehensive report of what the expert is going to
13 say or is anticipated to be his testimony.

14 When is that going to happen?

15 MS. POLK: Your Honor, the -- couple things.
16 First of all, this is the same situation that the
17 state is in with respect to the defense expert.
18 They noticed this medical examiner from New Mexico.
19 I've requested the opportunity to interview him.
20 They have told me he's not ready to be interviewed,
21 and they haven't produced any report. I don't know
22 if they're going to or not.

23 With respect to Rick Ross, the decision
24 has not been made whether or not Rick Ross will
25 provide a report. He -- he's in the process of

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1 receiving information to review. And then after
2 he's reviewed it, whether he produces a report or
3 not remains to be seen.

4 If he produces a report, obviously the
5 defense has that report. If he doesn't produce a
6 report, which is not required -- if he doesn't
7 produce a report, then I've indicated that the
8 state would provide the defense with a notice of
9 the issues of the areas that we believe Mr. Ross
10 will testify to so that they have something to work
11 from when they interview him.

12 And I would suggest to the Court that
13 this is what happens when you call -- when we call
14 what's called a "cold witness" or a "cold expert"
15 to the stand. Not every expert is familiar with
16 the facts of the case. And cases can proceed with
17 an expert who is called simply to offer information
18 that assists the jury in making a determination
19 without that witness knowing anything about that
20 specific case.

21 And in those cases that witness doesn't
22 produce a report, but that witness is available for
23 an interview. So it's not standard, it's not
24 required, that the witness have a report.

25 With respect to Mr. Ross, I don't know if
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1 he's going to have a report or not. With respect
2 to the defense witness, I'm in the same position.
3 I don't know if there is a report or not.

4 But there is no requirement that there be
5 a report. There is no requirement that says in
6 lieu of the report you get the state's notes. The
7 state's obligation is to give the defense full and
8 fair notice about the area that that expert is
9 going to testify about so that they can conduct a
10 meaningful interview. And we absolutely will do
11 that.

12 THE COURT: Ms. Do, there is a difference
13 between the disclosure requirements, comparing the
14 prosecution and the defense in one respect? The
15 way I read the rules, the defense can consult with
16 an expert. And if you don't list that expert, then
17 that still stays -- you know -- being privileged or
18 within work product.

19 The rule for the prosecution is written
20 much broader. If there is an expert who's looked
21 at the case in some fashion and you read
22 15.1(b)(4), and it doesn't fit so closely with the
23 type of expert I think he's contemplated here, it
24 seems to apply most clearly to testing,
25 comparisons, those things. But the language does

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1 cover all types of experts, I think.

2 But the state has a broader obligation.
3 If someone has looked at evidence and has an
4 opinion and you know it, you have to disclose it
5 whether there is a report or not. That's the way I
6 see that. The defense doesn't exactly have that
7 obligation unless the person is listed as a
8 witness. And then I think the obligations are the
9 same.

10 Ms. Do?

11 MS. DO: I absolutely agree with the Court.
12 In addition to that, we -- I don't know what
13 Ms. Polk -- I did send Ms. Polk a letter a few
14 weeks ago indicating to her that our medical
15 examiner was finishing up his analysis of this
16 case, is going to write a report, is available to
17 the state for an interview.

18 So we are absolutely in compliance with
19 our obligation with respect to trial expert
20 witnesses.

21 I do agree with the Court's assessment
22 that the burden on the prosecution is different
23 than the burden on the defense. But, again, we're
24 back to -- the issue at heart here is the fact that
25 they have a witness that they're going to call for

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1 trial.

2 And I know that in the notice given to
3 the defense, the state indicated he was going to
4 testify to group behavior. In the motion for
5 protective order, they added additional facts
6 regarding the proper opinions of this experts.

7 So we have not gotten full and fair
8 notice of what this expert is going to testify to.
9 So if Ms. Polk doesn't want to disclose her
10 notes -- we're not requiring it to be given to us
11 in that form. We're asking for disclosure of what
12 his opinion, analysis and conclusion are with
13 respect to the evidence he's reviewed in this case.

14 THE COURT: I think the discussion here has
15 removed some bit of confusion that arises with what
16 15.1(b)(1) encompasses with regard to statements.
17 And I think that's where the confusion comes in
18 about what is an expert statement. I really think
19 (b)(4) predominates.

20 And, Ms. Polk, that's the obligation.
21 And regardless of whether the expert has written up
22 something you would call a report, if the expert at
23 this point has looked at in this case statements,
24 that would be the evidence of the case.
25 Statements, predominantly. I would think there

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1 might be other kinds of information, I suppose,
2 certain documents as well.

3 But if he's seen those and has some kind
4 of an opinion, what you would call a result, then
5 that has to be disclosed.

6 And I think the defense is saying they
7 would rather have that in a report form or have it
8 in that fashion. But I think the state's
9 obligation is to provide that information.

10 It isn't through your notes. You don't
11 have to provide it by divulging notes that are full
12 of work product. And I agree with the state. I
13 think the defense agrees too. Separating out work
14 product from notes of an interview, whether it's an
15 expert or another type of witness, is extremely
16 difficult. Just the fact of taking notes reflects
17 mental impressions just by what's being emphasized
18 or whatever.

19 But that is the way I read 15.1(4)4. And
20 I think that information should be turned over.

21 MS. POLK: Your Honor, I agree with that. And
22 we're not even there yet. The defense was
23 demanding the notes from conversations that we had
24 in retaining this expert. And that's all that's
25 happened at this point.

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1 We've retained Mr. Ross. I'll have to
2 check with my staff to see if he's been provided
3 any information off the case yet. I don't know the
4 status. So we have not had an interview with
5 Mr. Ross where he tells us his impressions about
6 the case. That's out there. That hasn't even
7 happened yet.

8 But in the early stages of having
9 disclosed Mr. Ross, suddenly what the state was
10 getting was a demand from the defense that they get
11 our attorneys' notes from the conversations we had
12 in just trying to identify and retain Mr. Ross.

13 In fairness to the defense, we did notice
14 Mr. Ross as a witness for this hearing. And I
15 believe that's why they felt it so necessary to get
16 that information. But we withdrew that, the use of
17 Mr. Ross at this hearing.

18 And I suggest at this point now we need
19 to wait and follow the process, follow the rules.
20 When we have statements from Mr. Ross, we will
21 certainly disclose them. But Mr. Ross -- I'm not
22 even sure he's seen any information about the case
23 yet. I just don't know what stage we're at.

24 Suddenly the state was put in a posture
25 where we're trying to defend notes taken by
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1 attorneys in having that initial conversation about
2 whether or not to retain him. That's what our
3 motion for protective order was about.

4 And at that time I understood the defense
5 to -- their possession was that they thought they
6 were entitled to all those notes from contact with
7 anybody. They've since much -- they've narrowed
8 it.

9 I think we're all in agreement. They do
10 get statements made by this expert. I don't
11 believe the state has any at this point. But if
12 and when we get them, we will certainly disclose
13 them.

14 THE COURT: I think Ms. Do has made very clear
15 that the defense just felt that in light of the
16 very short time before the hearing, they needed to
17 get the information in whatever form it was
18 available. That's not the situation now.

19 But it's not far off, because really,
20 with the trial set in February, there is a lot of
21 work to be done.

22 MS. DO: Your Honor?

23 THE COURT: Yes.

24 MS. DO: We've been focusing this discussion
25 on the state's notes. And we did also make a

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1 request the state to have Mr. Ross provide his
2 notes, if any. And that has not been responded to.
3 And I know that the Court did not take that up at
4 the early argument.

5 But we would renew that request again.
6 We have not yet received a response from the state.

7 THE COURT: And as a listed witness, I think
8 that's appropriate. If he was not listed, you look
9 carefully at 15.1(b)(4), it hasn't gotten to the
10 point of actually constituting a result or opinion,
11 comparison. Perhaps not.

12 But I think once somebody is listed, then
13 either side --

14 It applies to both sides, Ms. Polk.

15 I agree you're going to get to look at
16 the notes that go into that person's work on the
17 case once that person is listed as a witness, an
18 expert witness.

19 So I didn't mean to not address that. I
20 just thought the harder issue was the question of
21 attorney notes. And I'm just assuming that before
22 interviews of the experts occur, the other side is
23 going to have notes, going to have notes.

24 I'll still -- the ruling will be much
25 more concise than it was shaping up before. But I
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1 think I made clear what I believe the
2 interpretation is.

3 The only thing, Ms. Polk and Ms. Do, is
4 the experts have to do their work and information
5 has to be exchanged. We just cannot get right up
6 to the end and then find out that there really was
7 information disclosed that hadn't been.

8 And these aren't the type of experts,
9 Ms. Polk, that I think people are contemplating to
10 be how you phrased it, cold expert, or where you
11 just have somebody testify without a report and get
12 information and answer hypotheticals or something.

13 What were you saying?

14 MS. POLK: Well, they might be, Judge. Where
15 you call a witness who has an area of expertise or
16 experience that can assist the jury in
17 understanding a fact in the case.

18 THE COURT: Well, these experts have been
19 listed and the information needs to be provided.

20 Anything else?

21 MS. POLK: No, Your Honor.

22 MR. LI: No, Your Honor.

23 MS. DO: No, Your Honor.

24 THE COURT: Thank you. Diane will be
25 contacting you. I'm going to have to look at some

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1 scheduling and see what I think needs to be done.
 2 But the question of getting the sweat lodge
 3 records -- that's something that's come up. I
 4 expect to see something on that quickly.

5 Thank you.

6 (The proceedings concluded.)
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1 STATE OF ARIZONA }
 2 COUNTY OF YAVAPAI } ss: REPORTER'S CERTIFICATE

3 I, Mina G. Hunt, do hereby certify
 4 that I am a Certified Reporter within the State of
 5 Arizona and Certified Shorthand Reporter in
 6 California.

7 I further certify that these proceedings were
 8 taken in shorthand by me at the time and place
 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript.

12 I further certify that I am not related to,
 13 employed by, nor of counsel for any of the parties
 14 or attorneys herein, nor otherwise interested in
 15 the result of the within action.

16 In witness whereof, I have affixed my
 17 signature this 21st day of February, 2012
 18

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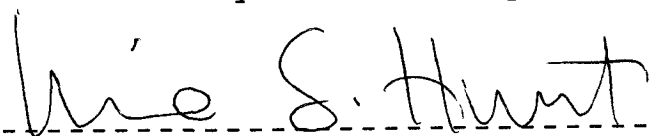
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19 -----
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